



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 02 जनवरी, 2023 / 12 पौष 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dated, 15th December, 2022*

**No. Shram (A) 6-2/2020 (Awards) Dharamshala.**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is

pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh i.e. "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	32/17	Ashok Kumar	Registrar, HPKV, CSK Palampur	11-10-2022
2.	56/19	Madan Lal	D.F.O. Nurpur	12-10-2022
3.	63/20	Anil Kumar	M/s Bector Food Specialities	14-10-2022
4.	191/17	Bansi Lal & Others	Director, Horticulture & Other	14-10-2022
5.	66/15	Ramesh Kumar	M/s Furniture Factory Bilaspur	15-10-2022
6.	177/17	Goda Devi	D.F.O. Joginder Nagar	19-10-2022
7.	165/17	Savitri Devi	-do-	19-10-2022
8.	503/16	Mehar Chand	S.E.E. HPSEBL, Kullu	19-10-2022
9.	505/16	Salig Ram	-do-	19-10-2022
10.	506/16	Chaman Lal	-do-	19-10-2022
11.	504/16	Ram Singh	-do-	19-10-2022

By order,

AKSHAY SOOD  
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 32/2017  
Date of Institution : 07-01-2017  
Date of Decision : 11-10-2022

Shri Ashok Kumar s/o Shri Partap Chand, r/o Village Amtrar, P.O. Lilly, Tehsil Nagrota Bagwan, District Kangra, H.P. . .Petitioner.

*Versus*

1. The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalaya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalaya, Palampur, District Kangra, H.P. . .Respondents .

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Shri N. L. Kaundal, Ld. AR  
 For the Respondent(s) : Smt. Rajni Katoch, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the verbal termination of services of Shri Ashok Kumar s/o Shri Partap Chand, r/o Village Amtrar, P.O. Lilly, Tehsil Nagrota Bagwan, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect that his services were engaged as daily waged worker on daily rated basis by the respondent *w.e.f.* 03.11.1995 in Live Stock Farm and other departments without issuing him the appointment letter, identity card and casual attendance card. A Union was formed by the workmen in the name and style of H.P. Krishi Vishvavidyalaya Mazdoor Sangh in the year 2008 and certain demands were raised in the welfare of workmen. Conciliation took place in the matter but the demands were not accepted by the officers of the respondent. The appropriate Government made a reference on the demand charter raised in the year 2009 by the Union. Around 200 workmen were terminated by the respondent after the reference. The reference was withdrawn by the Union on some technical grounds. The petitioner and other workmen were asked to join in the rolls of contractor namely M/s. Sahayta Security Services Private Ltd. in the year 2010 and on their refusal, the Head of Department unlawfully terminated the services of the petitioner despite of the fact that his work was thoroughly satisfactory and there was nothing against him. Neither any show cause notice nor any charge-sheet were served upon him. His services were terminated in clear cut violation of the provisions contained in Section 25-F of the Act. After the year 2010, the respondent employed the labour through various contractors such as M/s Sahayta Security, M/s. Sun Security Services Private Limited and M/s Nue Vision Shimla. The petitioner also joined the contractor on 18.7.2011 as per the interim order of the court and has been worked through contractor till date. One Smt. Promila Devi d/o Shri Shali Ram was engaged for 89 days in January, 2000 on contractual basis by the respondent and her services were regularized whereas, the services of the petitioner were terminated without any lawful reason. On such averments the petitioner has prayed for his reinstatement with full back wages *w.e.f.* 2010 to 17.7.2011 with seniority and all benefits and regularization of his services in the same manner as the services of Miss Promila Devi were regularized.

3. The respondent has resisted and contested the petition and pleaded that the petitioner was engaged on seasonal basis for grass cutting and other miscellaneous live stock maintenance work *w.e.f.* October, 1995 to 1998 and in the year 1995 he worked for 80 days, 108 days in 1996, 127 days in 1997 and 79 days in 1998 and thereafter did not report to the work out of his sweet will and he therefore, had no *locus standi* to approach the court. The petitioner is said to have been working through contractor in the Research Project for which specific funds are sanctioned by the

Government and the respondent had no role in the same. Smt. Promila Devi is said to have been appointed as Data Entry Operator on contractual basis initially and her services were regularized on the policy framed by the Government of H.P, hence, there was no similarity in between the case of petitioner and Smt. Promila Devi. The petitioner and other workers are said to have been engaged in pursuant to the interim order dated 14.7.2011 through contractor and there is no direct appointment. The petitioner is said to be not entitled for the relief as claimed by him. It is submitted that the claim petition be dismissed.

4. The petitioner has filed the rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties and keeping in mind the language of the reference received, following issues were framed on 04.07.2018 for determination:—

1. Whether the verbal termination of the services of the petitioner by the respondents during year, 2010 is/was legal and justified, as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the petitioner has no cause of action to file present case . . .*OPR*
5. Whether the petitioner has no *locus standi* to file the present case, as alleged? . . .*OPR*.
6. Whether this court has no jurisdiction to file the present case, as alleged? . . .*OPR*.
7. Whether the petitioner is/was daily paid worker of the respondent, as alleged. If so, its effect? . . .*OPR*.
8. Whether the petitioner has not approached to this court with clean hands, as alleged? . . .*OPR*.
9. Whether the petitioner has suppressed true material facts from the court, as alleged? . . .*OPR*.

Relief.

6. I have heard learned Authorized Representative/ counsel for the petitioner as well as learned counsel for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

- |             |      |
|-------------|------|
| Issue No. 1 | : No |
| Issue No. 2 | : No |
| Issue No. 3 | : No |
| Issue No. 4 | : No |
| Issue No. 5 | : No |
| Issue No. 6 | : No |

Issue No. 7	: No
Issue No. 8	: Yes
Issue No. 9	: No
Relief	: Petition is <b>dismissed</b> per operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No.1

8. There is a factual dispute on this issue. The petitioner alleges that he worked in continuity *w.e.f.* 03.11.1995 to 2010 with the respondent on muster roll basis, whereas, the respondent pleads that the petitioner had worked *w.e.f.* October, 1995 to December, 1998 as a daily paid labourer and thereafter left the work at his own. The petitioner has not tendered any document on the record in support of his plea. The respondent, on the other hand, has tendered several documents. The mandays chart of the petitioner has been tendered on the record Ext.RW1/D. As per this document, the petitioner has worked for 80 days in the year 1995, for 108 days in 1996, for 127 days in 1996 and 79 days in 1998. The petitioner has not disputed the correctness of this document as no question pertaining to the same has been put to RW1 Shri Dinesh Kumar. The respondent has further tendered on record consolidated bill of Rs.36360/- (Ext.RW1/D) pertaining to those daily paid labourers, who have worked in the year 1995 against several muster rolls. Ext.RW1/D2 and Ext.RW1/D3 are copies of payment register and petitioner has been shown at serial no.29 and 23 respectively having received 1020/- and 1140/- rupees respectively during the year 1995. These documents prove the fact that the services of petitioner were engaged in October, 1995 by the respondent on muster rolls as daily paid labourer. The respondent pleaded that the petitioner left the work at his own in December 1998 and led oral evidence in support of this plea. The petitioner has tendered no document to prove that his services remained in continuity till the year 2010. Except for the self serving statement of the petitioner, no other witness was examined to corroborate his case. Had the petitioner worked in continuity till the year 2010, there were no reasons for the respondent to withhold his mandays chart and the muster rolls against which payment was released in his favour. After all public money must have been disbursed to him. Not even a single penny of public money can be disbursed without documentation in support of the same. Had the petitioner worked till the year 2010 as a daily paid labourer, he would have examined any of his colleague in the witness box in support of his case.

9. The petitioner admittedly was engaged as daily paid labourer in the year 1995. The seniority list of daily paid labourers was circulated twice. The seniority list showing the position that existed on 31.3.2006 has been tendered on record as Ext.R1. It was circulated amongst all the daily paid workers so that anyone feeling aggrieved by the same could be represent. Another seniority list (Ext.R2) depicted the seniority position as on 31<sup>st</sup> March, 2008 was also circulated in the same manner among all the daily paid labourers and objections were invited before the list was finalized. The attention of the petitioner (PW1) was specifically drawn to these lists during his cross-examination. He admitted that both the seniority lists Ext.R1 and Ext.R2 did not find mention of his name. He denied that he did raise any objection regarding the seniority lists. He volunteered to speak that he had made objections to Vice Chancellor. Had any objection been raised by the petitioner to assail the seniority lists circulated twice by the respondent, copies of those objections would have been retained by him for further references. No such document has seen the light of the day. Even if, the petitioner had not retained copy of the objection raised by him, he could have summoned the record of the university pertaining to the date when such objections were submitted by him. By leading no evidence on this aspect, the petitioner has failed to prove that he had infact assailed the seniority lists. Had the petitioner been in the service of the

respondent as a daily paid labourer during the relevant time, he would have raised the objections soon after the lists were circulated. These seniority lists not finding name of the petitioner falsify his claim to the effect that he had worked in continuity as a daily paid labourer with the respondent till the year 2010. had he been working in continuity, his name would have been there in the lists. The petitioner could have examined any of his colleagues in the witness box. He could have named any of the colleagues with whom he has worked. This court could have summoned for the records/ muster rolls of the university pertaining to such a colleague of the petitioner to verify the fact whether the petitioner had worked as a daily paid labourer or not. Simply leveling of the allegations is not sufficient and much more is required. There is no doubt that labour laws are meant to benefit the labourers and save them from the exploitation by their employers, yet the petitioner can not escape the onus which he has to initially discharge before the same could be shifted upon the employer. In this case also, the petitioner has also not led any *prima-facie* evidence to prove that he had worked in continuity as a daily paid labourer till the year 2010.

10. The petitioner has also alleged that he was member of the Union formed by the workmen. Not even a single workman, who was member of the Union has been produce by the petitioner before this court to depose about the fact that petitioner was working together with him as a daily paid labour in the year 2009 when demand was raised by the Union. No document has been placed on the record to show as to what were the actual demands raised through the Union and how the demands were related to the petitioner. The copy of the demand notice has not been placed on the record to apprise this court of the contents of the same. The case of the respondent is that the petitioner left the work at his own and this fact has been proved by deposing on oath by a responsible officer of the respondent. RW1, Sh. Dinesh Kumar has stated that the petitioner has left the work at his own in the year 1998. The petitioner has not led any evidence to prove that he has worked in continuity till 2010. Had the petitioner worked in continuity with the respondent there was no reasons to not to maintain his muster rolls. The petitioner has failed to show any specific motive on the part of the respondent to destroy his muster rolls for so many years. No demand notice pertaining to Reference no.207/2010 has been placed on this file showing that the petitioner was in active service as daily paid labourer and he had raised genuine demands with other daily paid labourers to the respondent regarding the problems faced by them.

11. The learned A.R. appearing for the petitioner has argued that the Court cannot go behind the scope of reference and when the reference speaks of the fact that termination was in the year 2010, the Court has to simply adjudicate this question and can not move backward. He has argued that the court has to give the findings as to whether termination was bad for want of inquiry and for not complying the provisions of the Act. The learned counsel for the respondent, on the other hand, has argued that the case of the respondent has been throughout to the effect that petitioner has worked in between 1995 to 1998 and that too on seasonal basis, and thereafter, he had left the work at his own. She has further argued that the case of the respondent was same even before the Conciliation Officer and the reference does not mean that the Court shall not adjudicate upon the case of the respondent. According to her, reference does not mean that everything written therein has been admitted by the parties.

12. It is true that the Court cannot travel beyond the scope of reference, but it does not mean that the Court shall not adjudicate upon the plea of the respondent being taken right from the very beginning. A dispute is referred by the appropriate Government after the efforts for conciliation fails and it is satisfied that an industrial dispute exists. It does not mean that everything mentioned in the reference has been admitted by the parties. The making of the reference only means that the disputed pleas raised by the parties have been forwarded to the Court for an adjudication. Nothing mentioned in the reference can be treated as an admission of the parties. The Appropriate Government certainly can not enter into the merits of the case as put forth by the parties. The court has to adjudicate the merits on the basis of the material placed before it. Whether

the petitioner worked till the year 1998 or till the year 2010 is a question to be adjudicated by this court before the reference is answered. Thus the argument to the effect that the services of the petitioner are presumed to have been terminated in the year 2010, can not be accepted.

13. As aforesaid, the plea as taken by the petitioner could be substantiated by placing documents on the record. After all, University is a public body where every official act is done with proper documentation in support of the same. No document has been placed on record by the petitioner, which could prove that he had been working with the respondent till the year 2010. No witness has been examined by him to prove the fact that he has seen the petitioner working with the respondent till the year 2010 and the petitioner was paid by the respondent. So much so, no relative or family members of the petitioner has chosen to step in the witness box and depose that the petitioner had worked with the respondent till the year 2010. In case, a person has been paid the salary/wages from the Government funds for years together, a complete record pertaining such disbursement is maintained and such record is always available for inspection. Every official expenditure is audited by the Audit department. The petitioner could have applied for the said record under RTI. The petitioner could have placed several documents on the record to show that he worked with the university till the year 2010, but no such document was produced by him.

14. It is thus very much clear that mandays chart of the petitioner has not been maintained after the year 1998 and his plea to the effect that he has worked on daily wage with the respondent till the year 2010 is proved to be false. The respondent has examined Dr. Dinesh Kumar Vatsa as RW1 and he has stated about the fact that the petitioner has worked *w.e.f.* till the year 1998 and work was assigned to unregistered contractors and the labour was provided by the contractors. He has tendered on record copy of Office Order dated 27.11.2017 Ext.RW1/B, copy of statutes 1998 Ext.RW1/B1, copy of letter dated 31.05.2010 Ext.RW1/B2, copy of notification Ext.RW1/C, copy of letter Ext.RW1/D and copy of award Ext.RW1/E. He has tendered on record copy of License of sons security Ext.RW1/H, Registration Ext.RW1/I, application Ext.RW1 certificate Ext.RW1/J, Agreements Ext.RW1/K to Ext.RW1/O and copy of letter, Ext.RW1/P. There is nothing in the cross-examination of this witness that would support the case of the petitioner.

15. In view of the detailed discussion made hereinabove it is not established on the record that the petitioner has worked as daily paid labourer till the year 2010 with the respondent. Rather it is proved on the record that the petitioner has worked as a daily paid labourer with the respondent till the year 1998 as his name is not mentioned nowhere in the seniority lists of daily paid labourers proved on the record. When no document has been proved on the record to show that the petitioner was working on mandays chart till the year 2010 there is no question of his termination in the year 2010 therefore, the petitioner has failed to prove that his services were verbally terminated in the year 2010. Rather it is proved that record pertaining to the petitioner as daily paid labourer was maintained till the year 1998 and thereafter, no material has been placed on the record to show that petitioner has worked as a daily paid labourer in the year 1999, 2000 and till 2010. This issue is held against the petitioner as he has failed to prove that his services were terminated in the year 2010.

ISSUE No. 3

16. Since the claim petition has filed in pursuance to the reference received from the appropriate Government, therefore, claim petition is maintainable, hence this issue is held against the respondent.

ISSUE No. 4

17. The petitioner has failed to prove the cause of action regarding his verbal termination in the year 2010 therefore, this issue is held in favour of the respondent.

18. Since the petitioner was engaged as daily paid labourer in the year 1995 and therefore he has the *locus standi* to file the present case and this court has the jurisdiction as the reference has been received from the appropriate Government who was competent to do so, therefore, both these issues are decided against the respondents.

## ISSUE No. 7

19. Since the petitioner has failed to prove that in the year 2010 he was working as a daily paid worker therefore, this issue is decided in favour of the respondents. It is clarified that the petitioner was engaged as daily paid worker but after the year 1998 he discontinued his work as no such record has been maintained in which his services were shown as in the capacity of daily paid worker. This issue is held against the petitioner.

## ISSUE No. 8

20. The petitioner has certainly not approached this court with clean hand and has failed to lead any evidence on the record to show that he has worked as daily paid labourer till the year 2010, hence this issue is held against him.

## ISSUE No. 9

21. The petitioner has not suppressed any material facts from this court therefore, this issue is held against the respondent.

## ISSUE No. 2

22. In view of the findings on issue no.1 and others, this issue is held against the petitioner.

## RELIEF

23. In view of my above discussions, the present claim petition merits dismissal and is accordingly dismissed. Parties are left to bear their own costs.

24. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 11th day of October, 2022.

Sd/-

(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 56/2019  
Date of Institution : 23-5-2019  
Date of Decision : 12-10-2022

Shri Madan Lal s/o Shri Saran Dass, r/o VPO Ghadran, Tehsil Indora, District Kangra, H.P.  
through Van Vibhag Karamchari Workers Sangh, Himachal Pradesh (affiliated to BMS).

*Versus*

The Divisional Forest Officer, Nurpur Forest Division, District Kangra, H.P.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N.L.Kaundal, Ld. AR  
: Sh. Rajat Chaudhary, Ld. Adv.  
For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the demand of Shri Madan Lal s/o Shri Saran Dass, r/o V.P.O. Ghadran, Tehsil Indora, District Kangra, H.P. through Van Vibhag Karamchari Workers Sangh, Himachal Pradesh (affiliated to BMS) regarding regularization of his daily wages services *w.e.f.* year, 2006 (date he becomes entitled/eligible) as per Government Policy to be fulfilled by the Divisional Forest Officer, Nurpur Forest Division, District Kangra, H.P. is legal and justified? If yes, to what relief, service benefits above workman is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as a daily wage worker under Bhadroa Range of Nurpur Forest Division in 1986 and fictional breaks were given to him time to time till 1998 as a result of which he could not complete 240 working days in each calendar year. The petitioner worked for more than 240 days in each calendar year *w.e.f.* 1999 to 30.9.2012 and in this manner he had completed eight years service on daily wages till 2006 with minimum 240 days in each calendar year and he was entitled for regularization as per the policy of State Government. Since his services were not regularized, therefore, the petitioner raised the demand *vide* demand notice dated 25.11.2011 through General Secretary of Van Vibhag Karamchari Workers Sangh. The conciliation proceedings took place in the matter and failure report was submitted to appropriate Government on 18.4.2012 with the recommendations that the matter be referred to Labour Court for adjudication. The labour Inspector-*cum*-Conciliation Officer on 30.1.2019 wrote a letter to Divisional Forest Officer Nurpur asking him to apprise about the status of the petitioner and supply the mandays for which he has worked. As per this letter, the petitioner had worked for more than 240 days in between 1999 to 2012 and he was entitled for regularization in 2006 but his case was not considered, whereas, the workmen junior to him were

regularized. The petitioner further averred that he was wrongly retired w.e.f. 30.9.2012 at the age of 56 years, whereas, he would have attained the age of sixty years on 28.2.2016 for the reason that his date of birth was recorded in the department's records as 01.2.1956. It is submitted that the petitioner, is therefore, entitled for notional reinstatement w.e.f. 01.10.2012 to 28.2.2016 with all the benefits. The respondent is also said to have violated the principles of labour laws. The petitioner has, therefore, prayed for the relief that his fictional breaks be condoned and he be treated in continuous service till 28.2.2016 and all the benefits be released in his favour. He has also prayed for compensation and litigation costs.

3. The respondent has resisted and contested the petition and denied the averments made in the petition. It is explained that the petitioner has worked only for 230 days in 2004 and he has thus not completed minimum 240 days in this particular year hence, his case for regularization could not be considered. It is also pleaded that the respondent has never accepted the date of birth of the petitioner as 01.2.1956 though it has inadvertently been mentioned in Annexure-P1. The petitioner had produced his birth certificate in which date of birth has been recorded 06.09.1954 and he was rightly retired on 20.9.2012 after he had attained the age of superannuation. Denying other allegations as made in the petition, the respondent has prayed for dismissal of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 02.03.2020:—

1. Whether the demand of Sh. Madan Lal through Van Vibhag Karamchari Workers Sangh, Himachal Pradesh regarding regularization of his daily waged services w.e.f. year, 2006 as per Government Policy to be fulfilled by the respondent is/was legal and justified? If so, its effect? . . .*OPP*.
2. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.

Relief.

6. I have heard learned Authorized Representative/counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Affirmative
Issue No. 2	:	No
Relief.	:	Petition is partly allowed per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE No. 1

8. The petitioner has expanded the scope of the claim by claiming several reliefs in the same which are beyond the scope of the reference received by this court. The petitioner claims that his date of birth was 01.2.1956 and his retirement should have taken place in the year 2016

whereas, his date of birth was taken as 06.9.1954 by the department and he was retired on 30.9.2012. The petitioner has claimed notional reinstatement on this ground *w.e.f.* 30.9.2012 to 2016 and has claimed benefits. The petitioner has secondly, claimed that time to time termination in between his engagement to 1998 was also unwarranted and such breaks be condoned. Both these disputes are neither the part of the reference nor any such incidental question arise for determination from the reference. Therefore, this court can not adjudicate the same as such adjudication will amount to travel beyond the scope of reference which is not permissible under the law. Otherwise also, reference court can not adjudicate the question regarding date of birth of a particular worker as it is the duty of the Civil Court to declare the date of birth in case, the same is in dispute. Similarly, the time to time termination of the petitioner prior to the year 1998 is also not the subject matter of the reference nor any demand notice was issued to resolve such a dispute. Therefore this court again has no jurisdiction to examine this aspect of the matter.

9. Only question this court can examine in the present reference is with regard to the regularization of the services of the petitioner *w.e.f.* year 2006 as per the Government policy. The petitioner has claimed that he has worked for more than 240 days in between the year 1999 to 2006 and thus he had successfully worked for eight years continuously hence, his services were liable for regularization as per the policy of the Government. The respondent has also not disputed the policy and the criteria for regularization. As per the respondent, the services of the petitioner could have been regularized provided that he had worked for 240 or more days in 2004. As per the respondent, the petitioner has worked for 230 days in the year 2004 and therefore, his services could not be regularized. This court is now supposed to adjudicate this limited question. The petitioner has filed on record the copy of the seniority list of the daily wagers prepared on 26.2.2008 as Ext.PW2/A. This very document has also been tendered on the record as PW1/B. As per this document, the petitioner has worked for 281 days in the year 1999, 295 days in 2000, 249 days in 2001, 247 days in 2002, 309 days in 2003, 280 days in 2004, 274 days in 2005 and 253 days in 2006. As per the petitioner, he had thus fulfilled the criteria for regularization. The petitioner has tendered on record another seniority list pertaining to 31.3.2012 through PW4 Shri Karam Singh, Junior Assistant. As per this seniority list, the working days of the petitioner are shown totally different and upto 2005 he is shown to have not completed 240 days in any of the year except for the year 2000. It is for the respondent to explain the position. When the petitioner has been shown to have completed 240 days for continuous eight years in the seniority list of 2008 then how these working days were reduced in the year 2012. The respondent has not come up with any satisfactory explanation in this regard. A letter Mark-R1 has been produced on the record showing that the variation in the mandays has occurred on ground of rechecking of the vouchers by Range Officer, Indora. It is also mentioned in this letter that all the muster rolls etc. had been destroyed hence, the bills and muster rolls are not available. If bills and vouchers are not available how the respondent has come up with the case that the petitioner has worked for 230 days only in the year 2004? Even the seniority list of 2012 shows the number of working days as 91 in the year 2004. If the seniority list shows the working days as 91 in the year 2004 then how the respondent came to the conclusion while filing reply that the petitioner has worked only for 230 days? The source has not been disclosed by the respondent at all. It is not clear at all as to from which source this reply was prepared and filed in 2020 as the muster rolls and bills were allegedly destroyed in the year 2012 and seniority list 2012 shows the number of days of petitioner as 91 days in the year 2004. Thus the respondent has failed to remove the confusion. When the letter Mark-R1 is examined it becomes clear that the variation has occurred on account of rechecking done by the Range Officer. It therefore, appears that variation has come in the year 2012 and the seniority list of the 2012 is therefore not correct. It is not explained anywhere that the seniority list of 2008 was incorrect. No attempt has ever been made to correct the seniority list of the year 2008 by the respondent even after any defect was noticed. Therefore there is no reason to not to rely upon the seniority list of the year 2008 in which the petitioner is shown to have worked for 280 days in the year 2004. When the matter was pending before the appropriate Government a report was called for

by the Labour department from the respondent department and it was informed that the petitioner has worked for more than 240 days in between 1999 to 2006. Reference of such fact is made in Ext.PW1/C and there is no explanation in the reply or the evidence to show as to why such an information was supplied by the department to the Labour Officer/Labour Inspector. Thus there is no reason to disbelieve the seniority list prepared by the respondent in the year 2008 when there is no explanation furnished by the respondent to show as to how the variation appeared in the year 2012. When the original record was not available at the time of filing of the reply it is again not clear as to from where the number of working days in the year 2004 were shown as 230 days. The petitioner has thus succeeded in making a case in his favour to the effect that he has worked for a minimum 240 days in between 1998 to 2006 and therefore, he was liable to be considered for regularization as per the Government policy. Therefore issue no.1 is answered in affirmative and in favour of the petitioner.

## ISSUE No. 2

10. Since the claim petition has filed in pursuance to the reference received from the appropriate Government, therefore, claim petition is maintainable, hence this issue is held against the respondent.

## RELIEF

11. In view of my above discussions, the claim petition succeeds in part and is partly allowed. Since the petitioner has already retired in the year 2012, the relief claimed by him can be considered from the point of view of the financial benefits. It is therefore, held that the case of the petitioner be considered for regularization *w.e.f.* year 2006 as per regularization policy framed by the Government applicable at the relevant time on the basis of the working days mentioned in the seniority list as it stood on 26.02.2008, proved on the record as Ext. PW2/A. The petitioner is also held entitled to consequential financial benefits. Parties are left to bear their costs.

12. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 12th day of October, 2022.

Sd/-

(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

## IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	63/2020
Date of Institution	:	09-09-2020
Date of Decision	:	14-10-2022

Shri Anil Kumar s/o Shri Tirath Ram, r/o Village and Post Office Jankour, Tehsil and District Una, H.P. . .Petitioner.

*Versus*

The General Manager, M/s Mrs. Bector Food Specialties Limited, Plot No.13, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. . .Respondent .

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. R.K. Singh Parmar, Ld. AR

For the Respondent : Sh. Sanjeev Gupta, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Shri Anil Kumar s/o Shri Tirath Ram, r/o Village and Post Office Jankour, Tehsil and District Una, H.P. by the General Manager, M/s Mrs. Bectors Food Specialties Limited, Plot No.13, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. *w.e.f.* 21.02.2019 *vide* letter dated 21.02.2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. By way of this claim the petitioner has averred that he had joined as Fitter since the year 2006 with the respondent and has continuously employed till his illegal termination *w.e.f.* 21.02.2009. It is averred that no complaint against the petitioner's work and conduct during the period of his services. In the morning of 13.12.2018, the petitioner was transferred to Rajpura Plant where the petitioner should be joined on or before 18.12.2018 and as such the idea behind the transfer of the petitioner just to appoint fresh hands in place of the petitioner on less rate. It is further averred that no seniority had been maintained by the respondent in the category of the petitioner and adopted pick and choose method. Workmen junior to him namely S/Sh. Yashpal Singh, Surinder Singh, Rohit Kumar and Gagandeep were retained by the respondent. On such averments the petitioner had prayed for his reinstatement with full back wages along-with attendant benefits.

3. The respondent has resisted and contested the petition and taken up the plea that the claim petition is not maintainable, petitioner is estopped from to file the claim by his act and conduct. The petitioner has not approached this court with clean hands and intentionally suppressed. On merits, it was submitted that the petitioner had joined the service of the respondent since the year 2006 and as such the respondent denied the illegal termination of the petitioner *w.e.f.* 26.2.2019. The respondent/management had never passed transfer order of the petitioner on 13.12.2018 nor asked to join the destination plant on 18.12.2019. The respondent has not violated any provisions and rules of the Act. It is denied that the management has adopted the method of pick and choose while transferring the petitioner. The petitioner has not only disobeyed the terms and conditions of the factory as well as appointment letter but also violated the standings orders of the factory and therefore prayed for dismissal of the claim petition.

4. Before the petitioner could file rejoinder the learned Authorized Representative of the petitioner has made the statement before this court today stated therein that he does not want to pursue the present reference further and as such withdrawn the same on technical ground.

5. Since it is a reference, therefore, it is to be answered by this court and the reference cannot be withdrawn.

6. Since the petitioner has been not interested to pursue the present reference further, as well as the petitioner has also led no evidence on record to prove that his services were terminated without following the provisions of the Industrial Disputes Act. Therefore, the reference is answered accordingly holding that the petitioner has withdrawn the same on the technical grounds. Parties are left to bear their costs.

7. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 14th day of October, 2022.

Sd/-

(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 191/2017  
Date of Institution : 14-09-2017  
Date of Decision : 14-10-2022

Shri Bansi Lal s/o Shri Duni Chand, r/o V.P.O. Chahri, Tehsil Nagrota Bagwan, District Kangra, H.P. and (13) other workmen. . .Petitioners.

*Versus*

1. The Director of Horticulture, Himachal Pradesh, Shimla-2
2. The Deputy Director of Horticulture, Dharamshala, District Kangra, H.P.
3. The Fruit Technologist, H.P. Fruit Canning Unit, Nagrota Bagwan, District Kangra, H.P. . .Respondents .

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner(s) : Shri Rahul Gupta, Ld. Adv.  
 For the Respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the demands raised by Shri Bansi Lal s/o Shri Duni Chand, r/o V.P.O. Chahri, Tehsil Nagrota Bagwan, District Kangra, H.P. and (13) other workmen (list enclosed) *vide* demand notice dated 21-09-2015 (copy enclosed) before (i) the Director of Horticulture, Himachal Pradesh, Shimla-2 (ii) the Deputy Director of Horticulture, Dharamshala, District Kangra, H.P. (iii) the Fruit Technologist, H.P. Fruit Canning Unit, Nagrota Bagwan, District Kangra, H.P. is tenable, legal and justified? If yes, what relief of service benefits the aggrieved workmen are entitled to as per demand notice? If not, what are its legal effects?”

2. The case of the petitioners, in brief, is to the effect that they are working in Fruit Canning Unit, Nagrota Bagwan under the supervision of fruit technologist *w.e.f.* 1996 and their services have finally been terminated in July, 2015 without any written order and in violation to provisions contained in Section 25-F (a) and (b) of the Act. The respondent used to give fictional breaks to the petitioners from time to time in such a manner so that they could not complete 240 working days. Neither any show cause notice nor any charge-sheet was served upon them for any misconduct nor any inquiry was initiated nor one month's advance notice before termination was served upon them. The junior workmen to the petitioners are alleged to have been retained and the petitioners are deprived of the benefits of Payment of Bonus Act. As per the petitioners they are not given benefit of weekly off, national holiday, casual leave, sick leave and earned leaves and holiday for karva chauth, bhai dooj, raksha bandan etc. which are given to all the workmen under Negotiable Instrument Act. The petitioners claim that they have raised demand through the demand charter but nothing fruitful took place, and therefore, the reference was made by appropriate Government. The petitioners have thus claimed the relief regarding all the items mentioned in the demand charter copy whereof has been annexed with the reference by the appropriate Government.

3. The respondent has resisted and contested the petition on the ground of maintainability and delay and laches. On merits, the case of the respondent is to the effect that the petitioners were engaged on hourly contract basis to perform different duties according to the availability of work and as additional labourer and they are not the workmen of the respondent. It is further case of the respondent that since the workload of unit was increasing additional labour was required and since the respondent was not able to provide work during off season, therefore, the petitioners were given work on hourly contract basis and they had no rights available under the Act. In this manner the petitioners were neither given any fictional breaks nor there was any intention to reduce their working days but everything was dependent upon the requirement as per the working season. No person of the alleged category junior to the petitioners is said to have been retained. The petitioners are alleged to be agriculturists and whenever they are not given work then they work in their fields and the work performed by the petitioners is a seasonal work. It is also submitted that the workers of the category to which the petitioners belong are not entitled of weekly off, national holidays, casual leave, sick leave, earned leave etc. It is submitted that the demands are not legally maintainable, hence, the claim be rejected.

4. The petitioners have filed the rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. It may be stated before proceeding further that one of the petitioner *i.e.* Shri Bansi Lal submitted during the petition that he was not interested in the matter, and therefore, the reference qua him be not answered. Statement was separately recorded and therefore, answers to this reference shall not be binding on Shri Bansi Lal.

6. From the pleadings of the parties and keeping in mind the language of the reference received, following issues were framed on 23.07.2019 for determination:-

1. Whether the demands raised by the petitioner and (13) other workmen *vide* demand notice dated 21.09.2015 to the respondents is/was tenable, legal and justified, as alleged? . . .*OPP*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioners are entitled to as per demand notice? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.

Relief.

7. I have heard learned counsel for the parties at length and considered the material on record.

8. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: Negative
Relief	: Petition is <b>dismissed</b> per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE No.1

9. Before the petitioners succeed in this case they are supposed to prove that their engagement was as part-time workers with the respondents and they had been working as such since long. In case the petitioners are able to prove that they are part-time workers only then they can seek implementation of policies to regulate the services of the part-time workers formulated by the State Government from time to time. When the records of this case are carefully analyzed, it is clear from documents Ext.PW1/B dated 2<sup>nd</sup> June 2012, Ext.PW1/C dated 5th July 2007, Ext.PW1/D dated 30<sup>th</sup> May, 2012, that policies have been framed by the State Government from time to time in order to facilitate the conversion of part-time workers into daily wagers. Once the petitioners rely upon these notifications, it is understood fact that they claim themselves as part-time workers engaged by the respondents.



10. Several petitioners have stepped into the witness box in support of their case. Shri Bansi Lal has appeared as PW1. As aforesaid, he has not pressed the claim. Smt. Rajni Devi has appeared as PW2 and tendered her affidavit Ext. PW1/A. When she was subjected to cross-examination, document mark D1 was shown to her and she admitted that it was signed by her. Similarly Smt. Sakindra Devi (PW3) has tendered her affidavit Ext.PW3/A and admitted her signatures on document Mark-D2. Smt. Kamla Devi (PW4) admitted her signatures on document Mark-D3. In the same manner, Smt. Babli Devi (PW5), Smt. Sushma Devi (PW6), Smt. Bimla Devi (PW7), Smt. Indira Devi (PW9) admitted their signatures on documents Mark-D4 to Mark-D8 put to them during their cross-examination. All these petitioners, thereafter stated that they were illiterate and could not say as to what was written on these documents. When the documents Mark-D1 to Mark-D8 are carefully examined it is clear that these are written in Hindi and all these petitioners have signed these document and therefore, it does not lie in their mouth that they can not read the documents as all these documents have been prepared in Hindi. These documents when examined carefully show that these undertaking were signed by the petitioners at the time of their engagement and these documents find the stipulation that the services of these petitioners were being engaged on contract on hourly basis and no wages were to be paid. It is clear from these documents that such workmen could be removed at any time on accomplishment of the work and initially they are engaged for 28 days. The tenure could be extended in case the work was available. They have also signed the undertaking and undertaken that they will not claimed regularization and their engagement has nothing to do with their working for 240 days or more. The intentions of the respondents are very much clear from these documents which were signed by petitioners before they were given the work. The intention was the respondents to engaging temporary workers as an additional labour on contract hourly basis was only to have temporary labour to assist the regular labour. The petitioners have signed undertaking after understanding the contents of the same and they had been working right from the year 1998 on need basis. These petitioners can not be termed as a part-time workers as they were not paid for fixed four hours per day at the end of the month. This fact is clear from the wage bills of some of the workmen for January, 2017 and June, 2018 placed on the record as Ext.RW1/C1 to Ext.RW1/C12. It is clear from Ext.RW1/C1 that in January, 2017 Smt. Rajni Bala has worked for 168 hours. In case, this petitioner was part-time worker then her working hour would not have been exceeded 124 working hours and as there is no Government policy which speaks of taking the work for more than four hours from part-time workers. Similar is the position of Smt. Sikandra Devi. In Ext. RW1/C2 she is shown to have worked for 144 hours in the January 2017. Smt. Ajudia Devi has worked for 176 hours (Ext.RW1/C3), Smt. Aruna Devi has worked for 168 hours (Ext.RW1/C4), Smt. Puspha Devi for 176 hours (Ext.RW1/C5). In June, 2018 Shi Bansi Lal has worked for 240 hours (Ext.RW1/C6). Smt. Sushma Devi has worked for 184 hours (Ext.RW1/C7), Smt. Bimla Devi worked for 184 hours (Ext.RW1/C8), Smt. Indira Devi worked for 176 hours (Ext.RW1/C9), Smt. Rani Devi has worked for 128 hours (Ext.RW1/C10), Smt. Babli Devi for 176 hours (Ext.RW1/C11), Smt. Kamla Devi for 168 hours (Ext.RW1/C12) and Smt. Seema Devi has worked for 216 hours (Ext.RW1/C13). All these documents show that there were no fixed working hours for any of the petitioners. In case the petitioners worked for more hours they were paid more amount, and in case, any of the petitioner worked for less hours he was paid less amount. Such working is purely on hourly contract basis and not on part-time basis as a part-time worker is supposed to work for four hours a day and is paid accordingly. The policies meant to convert the part-time worker into daily wagers are applicable to those part-time who are engaged as on part-time basis and not on contract hour basis. The petitioners therefore, can not take any advantage of these notifications.

11. The petitioners when confronted with the documents Ext.RW1/D1 to Ext.RW1/D8 admitted their signatures but tried to avoid the documents on the plea that they could not say as what was written in the same. Since the document was in Hindi and some of the petitioners signed in Hindi and some of the them in English, the document which is written in Hindi could be read by every Hindi reading person. Moreover, the petitioners have not raised the demand to the effect that

these undertakings were fraudulent and result of unfair labour practice. Had these documents been assailed by way of demand and had there been reference to examine the legality of document, the position would have been different. The petitioners have not assailed these documents anywhere and, therefore, the court can not ignore these documents. Furthermore, the petitioners have not assailed the manner in which the payment was received by them. As aforesaid, some of the petitioners have worked for more than 200 hours per month and they can not termed as part-time workers at all. The petitioners have placed on record judgment of Hon'ble High Court of Himachal Pradesh in CWP No.281/2007 decided in April 12, 2007 (Ext. RW1/C). This judgment when carefully examined applies to the part-time class-IV employees who were ordered to be converted into daily wagers as per the policy. This judgment will not help the petitioners in any manner as they are not proved to part-time workers in this case but the nature of work undertaken by them is proved as seasonal work done on hourly basis. When the cross-examination conducted upon the petitioners examined as PW1 to PW9 in the witness box is carefully examined it is clear that they have admitted that the payments were made to them through written receipts. They have admitted that the working hours were also mentioned on the receipts. They have admitted that they were called to work only during the season making pickle, juices etc. It is thus very much clear that this additional labour was deployed only during the season and there was no permanent requirement of the labour with the respondents. The petitioners have tried to make out the case that muster rolls were issued in their favour in the year 1996 but no evidence has been led and placed on the record. Had any muster rolls been issued in their favour in the year 1996 they could have got the same summoned while the evidence was led by them. In view of the aforesaid discussion, the petitioners can not contend that they were given time to time breaks with a view to not let them complete 240 working days in a particular year. The petitioners also can not contend that they were working on muster roll basis and not on hourly basis. Once the petitioners are not proved to be the part-time workers or daily wagers working under the respondents they certainly can not claim the benefit of weekly off, national holiday, casual leave, sick leave and earned leave and off day for karva chauth, bhai dooj, raksha bandan etc. as they are not employees of the respondents. They are rather proved to have been engaged on hourly basis only during the fruit season to assist the regular labour as additional labour. It is also proved that once the season is over their work comes to an end and such break is not fictional breaks. The respondents have examined Dr. N.K. Kaushal as RW1 who has filed his affidavit Ext.RW1/A stating therein that the petitioners were engaged on hourly contract basis during the season and they were paid accordingly. He has specifically stated that neither any fictional breaks were given to them nor there was any intentions to prevent them from completing 240 days of work. He was subjected to cross-examination wherein he explained that the strength of 40 workmen is sanctioned in their unit. He has admitted that the petitioners have worked for even 240 days in some of the years till the year 2015. He has denied that the record regarding payment is withheld. He has denied that the petitioners were not working on hourly basis. He has specifically denied that the petitioners were paid on daily wage basis and the record has been withheld by them. Ext.RW1/C copy of order passed in the Writ Petition by Shri Bansilal and it may be stated here that Shri Bansilal has already submitted in writing that he is not interested in the reference and answer to the same may not affect his interest.

12. Thus the aforesaid reasons the demands raised by the petitioners are neither legal nor justified as they are not proved to be the workers of the respondents. They are rather proved as the workers who are engaged on hourly contract basis in order to complete the work during the fruit season. The petitioners are therefore not entitled for the relief regarding the demands raised by them in the demand notice dated 21.9.2015. Issue no.1 is held in negative.

### ISSUE No. 3

13. Petition is held maintainable as it has been filed in support of the reference, hence this issue is held against the respondents.

## ISSUE No. 4

14. There is no question of delay and laches involved in this case therefore, this issue does not arise for determination and is held against the respondents.

## ISSUE No.2

15. In view of finding on issue no.1, the petitioners except petitioner Shri Bansilal who has withdrawn his claim, are held not entitled for any relief. This issue is also held in negative.

## RELIEF

16. In view of my above discussions, the present claim petition merits dismissal and is dismissed accordingly. The Award shall have no effect on the rights of Sh. Bansilal, who has already withdrawn his claim. Parties are left to bear their own costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 14th day of October, 2022.

Sd/-

(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 66/2015  
Date of Institution : 23-02-2015  
Date of Decision : 15-10-2022

Shri Ramesh Kumar and 11 others through Shri B. S. Verma, Vice President, H. P. State Committee INTUC, Bilaspur, District Bilaspur, H.P. . .Petitioners.

*Versus*

The Employer/General Manager, M/s Furniture Factory, ITI Complex, Plot No. 42-A, Industrial Area, District Bilaspur, H.P. . .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner(s) : Sh. B. S. Verma, Ld. Adv.  
For the respondent : Sh. Dinesh Sharma, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether the demands at Serial No.2 to 16 *vide* demand notice dated nil (received on 10-01-2013) (copy enclosed) by Shri Ramesh Kumar and 11 others through Shi B. S. Verma, Vice President, H.P. State Committee INTUC, Bilaspur, District Bilaspur, H.P. regarding regularization as per Government Policy from the Employer/General Manager, M/s Furniture Factory, ITI Complex, Plot No.42-A, Industrial Area, District Bilaspur, H.P. are legal and justified? If yes, to what relief, service benefits and from which date the above workmen are entitled to from the above employer?

2. The reference has been received at the instance of Shri Ramesh Kumar and 11 others from the appropriate Government. It may be stated here that at the very beginning petitioner no.8 Sh. Darshan Kumar and petitioner no.12 Sh. Ram Singh have expired during the reference and applications to bring on record to their legal heirs have been allowed vide order dated 27.8.2021 and they are being represented by their legal heirs. The petitioners have pleaded in the claim that they are working with the respondent as skilled workmen and had been performing their duties honestly and sincerely for more than ten years and their services have not been regularized despite of the fact that there is a State Government policy applicable even to the respondent whereby all those workmen are to be regularized who have completed seven years of continuous service as a daily wagers. The petitioners have further pleaded that the management of corporation failed to regularize their services and thus they approached the Government vide the demand and this reference has been received. It is submitted that the reference be allowed and demands of the petitioners be considerably considered.

3. The respondent has resisted and contested the claim on the plea of cause of action and maintainability. On merits, the case of the respondent is to the effect that the petitioners are piece rated workmen and they do not fall in the category of those workmen who are governed by the judgment of Hon'ble Supreme Court in Mool Raj Upadhyaya *vs.* State of H.P. &Ors. and they are also not governed by the State Government regularization policy. It is submitted that there is no violation of any policy or judgment of the Hon'ble Supreme Court by the respondent and the reference be decided in negative and against the petitioners.

4. The petitioners have filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues were framed for determination on 21.3.2016:—

1. Whether the demands raised at serial no. 2 to 6 *vide* demand notice dated nil by the petitioner and 11 others regarding regularization as per Government Policy from respondents are illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioners are entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioners have no locus standi to file the case as alleged? . . .*OPR.*

5. Whether the petitioners have no cause of action to file the present case as alleged?

. .OPR.

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Affirmative

Issue No. 2 : Affirmative

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Relief. : Petition is **allowed** per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 to 5

8. All these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The petitioners twelve in number have pleaded in para no.1 of the claim the dates from which they are working with the respondent. The respondent in reply to this para has not denied this fact. The only plea taken by the respondent is that the petitioners are piece rate workers and are not working on daily wage. It was for the petitioners to prove their case in affirmative. Petitioner Shri Ramesh Kumar has examined himself as PW1. His affidavit is detailed in which he has stated on oath that he has been working *w.e.f.* 05.1.2005 on daily wages as skilled workman without any break. In his cross-examination he has denied the suggestions to the contrary. The petitioner Shri Ramesh Kumar has tendered on record his experience certificate Mark-A, seniority list Mark-B and attendance record Mark-C. He has also tendered copy of the regularization policy Mark-D. Mark-A was later on proved as Ex.P1. It was issued in the year 2007 and he has been shown as piece rate worker. Shri Ranbir Singh has appeared as PW2 and his affidavit is Ext.PW2/A. He is already 63 years old and thus he has attained the age of superannuation long back. He is said to have retired in the year 2013. According to him, he had been working since 1971 with the respondent. He has tendered on record his identity card Ext.PW2/B. No dispute has been raised to this document by the respondent. It shows that the petitioner was engaged in the year 1975 as a carpenter was getting wages @ of Rs.100/- per day. This document shows that he was paid on daily wage basis and not on piece rate basis. Shri Darshan Singh has appeared as PW3 and according to him he was engaged in the year 1985 and had been working in continuity since then. He has tendered his identity card Ext.PW3/B apart from his affidavit Ex.PW3/A. As per Ext.PW3/B he was getting wage of Rs.88/- per day at the time when this identity card was issued. Shri Gurbax has appeared as PW4 and tendered his affidavit Ext.PW4/A. He claims his engagement since 1979 and having completed the work of 240 days in each calendar year. He has tendered his identity card as Ext.P4. He has been shown that he was getting Rs.88/- per day and has been shown due for retirement in 2023. Shri Ram Singh has appeared as PW5 and stated regarding his appointment since 1991 and tendered his experience certificate as since 1991-1992 on piece rate Ext.PA. Shri Prem Singh has appeared as

PW6 and stated that he was working in continuity since 1993. His identity card has been tendered on the record as Ext.P7 and as per this document he was getting Rs.100/- per day at the time when this document was prepared. It has been signed by Labour Officer and Officer Incharge of factory. Shri Rajinder Kumar has appeared as PW7 and according to him, he was working without any break since 2003. He has also tendered on record experience certificate Ext.P6. He has been shown to have worked since March, 2003. He is not shown as piece rate worker in this document. Shri Bir Singh has appeared as PW8 and tendered his affidavit Ext.PW8/A. His identity card has been tendered as Ext.P5. He has been shown as a carpenter and getting Rs.88/- per day at the time when this identity card was issued in his favour. Sh. Mohd. Kaleem has appeared as PW9 and tendered his affidavit Ext.PW9/A. He has also tendered on record the identity card/experience certificate issued in his favour on 28.2.2011 and he has been shown as carpenter working in the factory since November, 2004. Shri Aftab has appeared as PW10 and tendered his affidavit Ext.PW10/A and his identity card/certificate as Ext.P3. He is shown to have been working since 2004. Shri Narayan Dass has appeared as PW11 and stated that he has been working since 1994. He has also tendered his experience certificate as Ext.P9 issued by the factory. Shri Sanjay Sanjeet Kumar has been examined as PW14. He is deaf and dumb. He was examined and cross-examined through the expert Shri Gopal Narayan as PW13 who has proved his identity card Ext.PW13/A and statement of the witness has been recorded on the basis of interpretation of the signs. Shri Sanjeev Kumar has stated that he has been working on daily wage basis for past 23 years. His identity card has been tendered on record as Ext.PW14/A and on the date of issuance of identity card he is shown to have working against Rs.90/- per day. He has also tendered on record his experience certificate as Ext.PW14/B which was issued on 05.6.2014. There is no denial to this certificate as well. The statements of aforesaid the witnesses suggest and prove that they have been working for a long time with the respondent. All these witnesses were subjected to cross-examination wherein they have specifically denied that they are working as piece rate workers.

10. The respondent while taking up the plea that the petitioners have worked as piece rate worker had taken the onus upon it to prove this fact. The respondent has examined Shri Lokesh Mahajan as RW1 in the witness box and in his affidavit Ext.RW1/A he has reproduced the facts pleaded in the reply. He has not placed on record any document. Not even it has been clarified as to how this piece rate system worked in the factory. To the understanding of a common man, piece rate work is a work for which payment is not made daily wage basis or hourly basis but such worker is paid according to the quantity of the material produced/prepared by him. In a furniture factory piece rate would mean that the different rates are fixed for different item. In case a worker prepares a chair then he has to be paid according to the approved rates. If he prepares ten chairs in a month then the amount payable for one is multiplied by ten. Piece rate is never stable and it is always subjected to increase and decrease as per the number of the items manufactured/ prepared by the worker. The amount payable to such a workers depends upon the quantity of material produced by him. The respondent is a furniture factory and it is run by the Government on some settled rules. There are several workmen working in such a factory and in case it was decided that the workman shall be engaged on piece rate basis then some resolution must have been passed or an order from authority must have been passed and thereafter consistently followed. In case piece rate is paid to the workman, then a complete documents shall be available with the respondent to show as to which rate was paid against which item. Such rates must have been decided either in some meeting or by the superior officers who were supposed to make the rules. Several documents must have been prepared before the workmen were engaged on piece rate basis. It is also a matter of common sense that prices increases year to year and the piece rates must also increase time to time. One document must have been replaced by another document showing the increase of piece rate. Such documents must have been available in the records of the respondent. Surprisingly, no document has been placed on the record on behalf of the respondent which would show that there was complete mechanism evolved in the respondent factory and several documents were issued by the authorities who were competent to pass an order and make rules pertaining to the furniture

factory. Not even a single document has been proved on the record to show that particular rate was fixed for a particular item and the petitioners were getting variable amount every month or every day. Had any document been produced for the inspection of this court, the court would have examined the same and opinion whether the respondent was paying the petitioners on piece rate basis or not. When no such document has been produced on the record by the respondent despite of the fact that respondent had engaged several workmen for years together and they were paid regularly from the government funds, an adverse inference is liable to be drawn against the respondent factory. The documents appears to have been intentionally withheld from the court so that truth is not exposed. The petitioners have filed on records identity cards issued to them in which wage of per day have been mentioned. When a person is paid a fixed daily rate then it can not be termed as piece rate as per day rate is called the daily wages. There is no explanation on the record as to why per day wage was written on the identity cards issued to the workmen. The petitioners have specifically stated that they were not piece rate worker but they were paid on daily wages basis. There is no reason to disbelieve them as no documents has been placed on the record by the respondent to show as to what was actual practice followed in the factory. As aforesaid, several documents must have been prepared while running this factory and any document issued in the past could have been brought to the notice of the court. Not even a single document has seen the light of the day on behalf of the respondent and therefore, the respondent has miserably failed to prove that the petitioners were working on piece rate basis as pleaded. There is no reason to disbelieve the petitioners as they have not only led oral evidence but have also produced documents in support of their claim. The petitioners have therefore, succeeded to prove that they were working on daily wage basis and not on piece rate basis.

11. The petitioners have examined Shri Brijesh Kumar as PW12 who is the employee of the respondent factory and he was asked to produce certain record. He has produced the attendance record of the petitioners as Ext.PW12/A. When this document is examined it is clear that all these workmen have worked for considerable period for every year and these details show that the petitioners were working on daily wage basis and not on casual basis as has been claimed. Ext.PW12/B is the similar document. Ext.PW12/C is the seniority list in which all these workmen have been shown. Ext.PW12/D1 is regarding deploying one of petitioner Shri Ranbir Singh as Band Saw Operator in the factory for a period of three months only. Ext.PW12/D2 is joining report and Ext.PW12/D3 and D4 are the appointment letters. Exts.PW12/D5 and D6 etc. the same letters whereby his work was extended for next three months.

12. Shri Ranvir Singh was offered contract appointment *vide* letter Ext.PW12/D8 and Ext.PW12/D9 is the contract. Ext.PW12/D13 is letter/representation by Shri Ranvir Singh for regularizing his services as his contract has also been extended from time to time. Shri Prashant Chander, Senior Assistant has appeared as PW15 and proved on the record policy of the Government Ext.PW15/A, another policy Ext.PW15/B. As per these policies of daily wage worker/contingent paid workers were to be regularized in the phase manner. Ext. PW15/C is a similar policy.

13. In view of the aforesaid discussion it is held that the petitioner have been working on daily wage basis from their initial engagement and they are not proved as piece rate workers as claimed by the respondent. It is further held that the petitioners have a right to be considered for regularization as per the policies framed by the Government from time to time taking into account the number of years they have worked. Since two petitioners namely Shri Ram Singh and Shri Darshan Kumar have expired, therefore, their regularization shall be considered on notional basis in order to give the financial benefits to their kith and kin. Similarly those petitioners who have retired they shall also be consider notationally for the financial benefits. It is further held that the respondent shall consider the cases of the petitioners for regularization in accordance with the settled rules and policies applicable to each of the petitioners. The only obstacles coming in the

way of the petitioners shall stand removed once it is held by this court that the petitioners are proved as daily waged workers and not piece rate workers. Issue no.1 is answered in affirmative. The petition is held as maintainable and the petitioner have *locus standi* and cause of action in their favour, Issues no.1 and 2 are held in affirmative and the issues no.3 to 5 are held against the respondent.

#### RELIEF

14. In view of my discussions hereinabove petition is allowed and the reference is answered in the following terms (a) the status of the petitioners is declared that of the daily wagers and not as piece rate workers from the date of their initial engagement (b) the respondent shall be considered the cases of all the petitioners for their regularization as per the policies of State Government regarding regularization applicable to the individual case (c) those workmen who have expired and those workmen who have retired, their cases shall be considered on notional basis in order to give financial benefits to them or their kith and kin as the case may be. Parties are left to bear their own costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of October, 2022.

Sd/-

(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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#### IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 177/2017  
Date of Institution : 08-8-2017  
Date of Decision : 19-10-2022

Smt. Goda Devi w/o Shri Prem Singh, r/o Village and Post Office Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . .Respondent.

#### Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N. L. Kaundal, Ld. AR  
For the respondent : Sh. Gaurav Keshav, Ld. ADA



## AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Smt. Goda Devi w/o Shri Prem Singh, r/o Village and Post Office Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during August, 2008 to February, 2015 and finally terminated during March, 2015 by the Divisional Forest Officer, Forest Division Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that she was engaged in the year 2008 as daily waged worker without appointment letter by the respondent and she worked upto 2015 and thereafter her services were terminated by Range Officer, Joginder Nagar without complying the provisions of law. Prior to this, she was given fictional breaks despite of the fact that the work was always available and her work and conduct was satisfactory. The principle of 'last come first go' was also violated as Smt. Rani Devi w/o Shri Hoshiar Singh (2010), Shri Prem Singh s/o Shri Bikham Ram (2011) and Shri Kashmir Singh s/o Shri Molak Ram (2012) were retained at the cost of the petitioner. Neither any casual card and nor any wage slip was issued in favour of the petitioner. The petitioner never submitted any bills nor there were directions of the department to obtain the work on bill voucher basis. The respondent did not pay the regular salary to the petitioner but payment was made through bill voucher after 3 to 6 months. Demand was raised by the petitioner by way of notice dated 22.9.2015 and nothing was done by the respondent and thus when the conciliation failed, the present reference was made. On the aforesaid averments, the petitioner has prayed that time to time fictional breaks be condoned and the period of absence be counted as period in service and her services be reinstated with all consequential benefits as there was not only the violation of Section 25-F but of 25-G & H of the Act as well.

3. The respondent has resisted and contested the petition and taken up the plea that the petitioner was never engaged as daily wager as claimed by her. Rather she was engaged in the year August, 2008 on bill basis to do the seasonal forestry work keeping into account the availability of funds. It is explained that the department performs seasonal work like plantation, fire protection soil moisture conservation works for a particular season on bill basis. The work is assessed on the spot and the payment is made as per the actual performance. The funds are also ear-marked for such purposes and once the purpose is achieved the labour is not required. The petitioner, as per the respondent, was therefore, not a daily wager and she was also not entitled for the relief as claimed by her. It is also pleaded that the bill vouchers placed on the record would show that she has been paid more than Rs.9000/- and Rs.-14000/- many times which is much more than the daily wages, hence, it is very much clear that she has worked on bill basis and her presence was never marked, and therefore, there was no question of completing 240 working days in order to attract the violation of Section 25-F of the Act. So far as Smt. Rani Devi etc. are concerned, they are said to be casual workers and there can not be any parity between them and the petitioner. The respondent has given reference of notification of Government pertaining to the year 2009 wherein the Government has specifically directed the department to execute such seasonal works on bill basis. It is submitted that neither any fictional breaks were given to the petitioner nor her services were terminated as she was not a daily wager but she had worked on bill voucher basis for the required period hence, the petition was liable to be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. She has asserted that she was made to work on muster roll basis, and therefore, she was a daily wage worker.

5. From the pleadings of the parties and intention of the reference, following issues were framed for determination on 12.09.2018:—

1. Whether time to time termination of service of the petitioner by the respondent during August, 2008 to Feb., 2015 is/was legal and justified as alleged? . . .*OPP*.
2. Whether final termination of service of petitioner by the respondent during August, 2015 is/was legal and justified? . . .*OPP*.
3. Is issue no.1 or issue no.2 or both are proved in the affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. I have heard learned Authorized Representative/Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: No
Relief.	: Petition is <b>dismissed</b> per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 to 4

8. All these issues are taken up together for the sake of convenience and to avoid repetition of evidence, and moreover, all these issues can be disposed of by way of single findings.

9. The learned Authorized Representative for the petitioner has heavily relied upon the seniority list placed by him on the record as Ext.PW1/B. This seniority list is that of the casual labourer (daily wagers) of Joginder Nagar Forest Division as it stood on 30.12.2016. According to the learned Authorized Representative, the name of the petitioner has been shown at serial no.112 in the same and she was engaged on 01.08.2011, hence, the plea of the respondent that she was not engaged as daily wagger was falsified from the same. The learned Authorized Representative has submitted that the rest of the documents filed on behalf of the respondent on the record are tailored and can not be taken into account. He has submitted that on the basis of this document coupled with the oral evidence led by the petitioner, she has proved that her engagement was as a daily wage beldar and her services were terminated without following the provisions of the Act, hence, the petition was liable to be allowed.

10. On the other hand, the learned Assistant District Attorney for the respondent has argued that this document, no doubts, show the status of the petitioner as a daily wage worker but this document is not proved in accordance with law and, this document appears to be incorrect document prepared by the filed staff to give benefit to the petitioner and other likewise people. He has further pointed out that had the petitioner been the daily wage beldar her name should have been in the seniority list for the year 2012 placed on the record Ext.PW1/D and relied upon by the petitioner herself. He has also argued that the respondent has produced entire record showing the payment of bill basis and all these record can not be fabricated in one day as payments from the government funds have also been made to the petitioner on the basis of same and the petitioner has not disputed her signatures of these documents. He has prayed for the dismissal of the petition.

11. When the document Ext.PW1/B is carefully gone through, it shows that the status of the petitioner as daily wagger having been engaged on 01.8.2011. This document shows that the seniority of the daily wage workers of Joginder Nagar Forest Division as on 31.11.2016. The question that arises for consideration is whether this document can be relied upon even if the respondent has failed to explain the contents of this documents? When this document is examined from different angles, it is proved a doubtful document and no reliance can be placed upon the same for several reasons discussed hereinafter. Firstly this document is seniority list of casual labourers as on 30.11.2016. It means that on 30.11.2016 the workmen shown in this list were still in service and none of them has been terminated. If this document is believed as it is, even then name of the petitioner should not have figured in the same as she claims that her services were terminated by the respondent in the year 2015 without complying with the provisions contained in Section 25-F of the Act. The reference is also to the same effect showing the final termination of the petitioner in August, 2015. In case, the services of the petitioner have been terminated in August, 2015 there is no question to show her name in the seniority list as on 30.11.2016 as her name would have figured only in the seniority list of 2015 and not in the year 2016 as she was allegedly terminated in August, 2015. In this situation, she could not have been shown at serial no.112 of the seniority list prepared on 30.11.2016. This fact shows that the seniority list is an incorrect document on the face of it and it can not be relied upon despite of the fact that the respondent has not explained the entries made in the same.

12. The second reason for not relying upon this document is explained by another seniority list proved on the record as Ext.PW1/B by the petitioner herself. This seniority list belongs to casual labourer/daily wagers as on 31.12.2012. The petitioner claims that she was engaged on 01.8.2011 and thus on 31.12.2012 her name would have found a place in this list as it was finalized on 31.12.2012. In fact, all the workmen who were working with the respondent on 31.12.2012 should have found their names mentioned in this seniority list as per their seniority. This seniority list Ext.PW1/B shown the number of workmen as 167. The last workman Smt. Sarita Devi is shown to have been engaged on 07.6.2009. No other workman has been engaged after 07.6.2009. This list has been relied upon by the petitioner herself and she has not disputed this list. Had the petitioner been working as a daily wagger with the respondent *w.e.f.* 01.8.2011 her name would have found mention in the seniority list depicting the position as on 31.12.2011. Absence of the name of this petitioner in this list proves that she was not a daily wagger in the year 2012. when she was not a daily wagger in the year 2012 then how her name was abruptly entered in the seniority list dated 30.11.2016 is not clear. It simply means that her name was introduced in the seniority list that was prepared in the year 2016 for the first time. The petitioner has failed to explain as to why her name has been shown in the seniority list dated 30.11.2016 for the first time and why her name was not shown in the seniority list dated 31.12.2012. This list Ext.PW1/B also falsified the case of the petitioner to the effect that she was engaged a daily waged worker in August, 2011 and she worked in the same capacity after her alleged termination.

13. On the other hand, the case of the respondent has been very specific to the effect that petitioner was in fact engaged on bill basis and she was given a consolidated work at one point of

time and when the work was completed, the same was assessed in accordance to the prescribed norms. To prove this fact, the respondent has proved on record a document prepared from the records by B.O. Chauntra to show the manner in which payments were made to the petitioner. It is clear from this document Ext.RW1/B that for the month of August, the petitioner was paid Rs.14420/-. In the month of October she was paid Rs.9960/-. In the year 2011 the daily wage fixed in the State of Himachal Pradesh was much below to Rs.14420/- .Even as on today the daily wages of a beldars are not above Rs.14000/-. The respondent has examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar and his affidavit is Ext.RW1/A. He has categorically stated about all these facts. The petitioner has examined Shri Devender Singh Dogra, Range Officer, Joginder Nagar as PW2 in the witness box and he had brought all the record requisitioned from him. He has stated that no tender was allotted to the petitioner for bill basis and no advertisement was issued by the department. When this Range Officer was shown the documents pertaining to the payment received by the petitioner he admitted the same is correct. These documents are Ext.R1 to Ext.R23. When these documents are carefully examined, it is clear that the petitioner was paid after assessing the work done by her and such payments were not made on daily wage basis. It is also clear from these documents that she has either prepared the pits or filled up the pits or planted the plants and she was paid as per the rates approved. The petitioner has signed every such payment and in Ext.R1 she was paid sum of Rs.14420/- which is higher to the daily wages of a workman of the present days. The petitioner has not raised an objection while receiving such payment and now she can not contend that she was a daily wager and has never worked on bill basis. These documents have come from the proper custody and these documents have not been disputed by the petitioner. These documents suggests that the petitioner used to complete a specific assigned work and thereafter her work was assessed and the payment was accordingly made. These documents do not suggest that she has worked on daily wage basis and was paid fixed daily at the end of the month. There is nothing in the statement of Shri Rajeev Kumar which would prove that the petitioner was a daily wager and she was working on muster roll. It is clear from his statement that the petitioner was made to work on bill basis and she was doing seasonal work rather than working on muster roll basis. The witness Shri Rajeev Kumar was questioned regarding some other workmen who have been regularized but there can not be any parity in between the daily wage workers and the present petitioner who was working on bill voucher basis. There is no document on the record which would show that even after the year 2009 when the Government of Himachal Pradesh had issued specific notification to the effect that no workman shall be engaged on muster roll basis, the respondent still violated these instructions and engaged workmen on muster roll. The officer of the respondent department would have never violated the directions of the State Government and engaged the workman on muster roll against the orders. No evidence has been led by the petitioner to show that a particular person was engaged on daily wage by the department in violation to the directions of the State Government. The petitioner has simply relied upon the incorrectly prepared documents which could not be relied for the reasons already discussed hereinabove. The petitioner has failed to prove that she was a daily waged beldar and had worked on muster roll basis. Rather it is proved that she had worked on bill basis and specific amount was paid to her on the completion of the work. Learned Authorized Representative of the petitioner has argued that bill vouchers system is a device developed by the respondent in order to bypass the labour laws. Since there is no such reference received from the appropriate Government, therefore, this court can not adjudicate this plea as it is beyond the scope of the reference. Had the reference been to the effect as to whether the bill voucher system of work was a camouflage devised merely to frustrate the rights of the workman under Section 25-F of the Act, the position would have been different and this court could have adjudicate such a question. but when no such question has been posed through the reference before this court, the court can not examine this question. In view of the aforementioned reasons it is not proved that the petitioner was a daily wage beldar and she was given intentional breaks and her services were finally terminated in August 2015. Rather the petitioner is proved to have worked on bill voucher basis with the respondent as and when seasonal work was available and she was paid after the work

done by her was assessed. The petitioner has failed to prove issues no.1 and 2 and both are held answered in negative and that the petitioner is not entitled to any relief. Issue no.3 is also held in negative. The petition is stated to be maintainable as it has been filed in support of the reference received from the appropriate Government, hence issue no.4 is answered in the favour of the petitioner.

#### RELIEF

14. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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#### IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 165/2017  
Date of Institution : 08-8-2017  
Date of Decision : 19-10-2022

Smt. Savitri Devi w/o Shri Bhim Singh, r/o Village Khalai, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . .Respondent.

#### Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N. L. Kaundal, Ld. AR  
For the respondent : Sh. Gaurav Keshav, Ld. ADA

#### AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Smt. Savitri Devi w/o Shri Bhim Singh r/o Village Khalai, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during August, 2011 to July, 2015 and finally terminated during August, 2015 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that she was engaged in the year 2010 as daily waged worker without appointment letter by the respondent and she worked upto 2015 when her services were terminated by Range Officer, Joginder Nagar without complying the provisions of law. Prior to this, she was given fictional breaks despite of the fact that the work was always available and her work and conduct was satisfactory. The principle of ‘last come first go’ was also violated as Smt. Rani Devi w/o Shri Hoshiar Singh (2010), Shri Prem Singh s/o Shri Bikhram Ram (2011) and Shri Kashmir Singh s/o Shri Molak Ram (2012) were retained at the cost of the petitioner. Neither any casual card nor any wage slip was issued in favour of the petitioner. The petitioner never submitted any bills nor there were directions of the department to obtain the work on bill voucher basis. The respondent did not pay the regular salary to the petitioner but payment was made through bill voucher after 3 to 6 months. Demand was raised by the petitioner by way of notice dated 22.9.2015 and nothing was done by the respondent and thus when the conciliation failed present reference was made. On the aforesaid averments the petitioner has prayed that the time to time fictional breaks be condoned and the period of absence be counted as period in service and her services be reinstated with all consequential benefits as there was not only the violation of Section 25-F but 25-G & H of the Act as well.

3. The respondent has resisted and contested the petition and taken up the plea that the petitioner was never engaged as daily wagger as claimed by her. Rather she was engaged in the year August, 2011 on bill basis to do the seasonal forestry work keeping into account the availability of funds. It is explained that the department performs seasonal work like plantation, fire protection soil moisture conservation works for a particular season where after the requirement of labour does not exist, hence, such labour is engaged on the bill basis. The work is assessed on the spot as the payment is made as per the actual performance. The funds are also ear-marked for such purposes and once the purpose is achieved the labour is not required. The petitioner, as per the respondent, was therefore not a daily wagger and she was also not entitled for the relief as claimed by her. It is also pleaded that the bill vouchers placed on the record would show that she has been paid more than Rs. 9000/- and Rs. 14420/- many times which is much more than daily wages, hence, it is very much clear that she has worked on bill basis and her presence was never marked, and therefore, there was no question of completing 240 working days in order to attract the violation of Section 25-F of the Act. So far as Smt. Rani Devi etc. are concerned, they are said to be casual workers and there can not be any parity between them and the petitioner. The respondent has given reference of notification of Government pertaining to the year 2009 wherein the Government has specifically directed the department to execute such seasonal works on bill basis. It is submitted that neither any fictional breaks were given to the petitioner nor her services were terminated as she was not a daily wagger but she had worked on bill voucher basis for the required period hence, the petition was liable to be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. She has asserted that she was made to work on muster roll basis, and therefore, she was a daily wagger worker.

5. From the pleadings of the parties and intention of the reference, following issues were framed for determination on 12.09.2018:—

1. Whether time to time termination of service of the petitioner by the respondent during August, 2011 to July 2015 is/was legal and justified as alleged? . . .*OPP*.
2. Whether final termination of service of petitioner by the respondent during August, 2015 is/was legal and justified? . . .*OPP*.
3. Is issue no.1 or issue no.2 or both are proved in the affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. I have heard learned Authorized Representative/Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Negative

Issue No.2 : Negative

Issue No.3 : Negative

Issue No.4 : No

Relief. : Petition is **dismissed** per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 to 4

8. All these issues are taken up together for the sake of convenience and to avoid repetition of evidence, and moreover, all these issues can be disposed of by way of single findings.

9. The learned Authorized Representative for the petitioner has heavily relied upon the seniority list placed by him on the record as Ext.PW1/B. This seniority list is that of the casual labourer (daily wagers) of Joginder Nagar Forest Division as it stood on 30.12.2016. According to the learned Authorized Representative, the name of the petitioner has been shown at serial no.112 in the same and she was engaged on 01.08.2011, hence the plea of the respondent that she was not engaged as daily wager was falsified from the same. The learned Authorized Representative has submitted that the rest of the documents filed on behalf of the respondent on the record are tailored can not be taken into account. He has submitted that on the basis of this document coupled with the oral evidence led by the petitioner she has proved that her engagement was as a daily wage beldar and her services were terminated without following the provisions of the Act, hence, the petition was liable to be allowed.

10. On the other hand, learned Assistant District Attorney for the respondent has argued that this document, no doubts, show the status of the petitioner as a daily wage worker but this document is not proved in accordance with law, this document appears to be incorrect document prepared by the filed staff to give benefit to the petitioner and other likewise people. He has further

pointed out that had the petitioner been the daily waged beldar her name should have been in the seniority list for the year 2012 placed on the record Ext.PW1/D and relied upon by the petitioner herself. He has also argued that the respondent has produced entire record showing the payment on bill basis and all these record can not be fabricated in one day as payments from the government funds have also been made to the petitioner on the basis of same and the petitioner has not disputed her signatures of these documents. He has prayed for the dismissal of the petition.

11. When the document Ext.PW1/B is carefully gone through, it shows that the status of the petitioner as daily wagger having been engaged on 01.8.2011. This document shows that the seniority of the daily wage workers of Joginder Nagar Forest Division as on 31.11.2016. The question is whether this document can be relied upon even if the respondent has failed to explain the contents of this documents. When this document is examined from different angles, it is proved as doubtful document and no reliance can be placed upon the same for several reasons discussed hereinafter. Firstly this document is seniority list of casual labourers as on 30.11.2016. It means that on 30.11.2016 the workmen shown in this list were still in service and none of them has been terminated. If this document is believed as it is, even then name of the petitioner should not have figured in the same as she claims that her services were terminated by the respondent in the year 2015 without complying with the provisions contained in Section 25-F of the Act. The reference is also to the same effect showing the final termination of the petitioner in August, 2015. In case, the services of the petitioner have been terminated in August, 2015 there is no question to show her name in the seniority list as on 30.11.2016 as her name would have figured only in the seniority list of 2015 and not in the year 2016 as she was thrown out of the job in August, 2015. In this situation, she could not have been shown at serial no.112 of the seniority list prepared on 30.11.2016. This fact shows that the seniority list is an incorrect document on the face of it and it can not be relied upon despite of the fact that the respondent has not explained the entries made in the same.

12. The second reason for not relying upon this document is explained by another seniority list proved on the record as Ext.PW1/B by the petitioner herself. This seniority list that of casual labourer daily wagers as it stood on 31.12.2012 the petitioner claims that she was engaged on 01.8.2011 and thus on 31.12.2012 she should have finding her name in this list that was finalized on 31.12.2012. In fact all the workmen who were working with the respondent on 31.12.2012 should have found their name mentioned in this seniority list as per the their seniority. This seniority list Ext.PW1/B shown the number of workmen as 167. The last workman Smt. Sarita Devi is shown to have engaged on 07.6.2009. No other workman has been engaged after 07.6.2009. This list has been relied upon by the petitioner herself and she has not disputed this list. Had the petitioner been working as a daily wagger with the respondent *w.e.f.* 01.8.2011 her name would have find it mentions in the seniority list that stood on 31.12.2011. Absence of the name of this petitioner in this list proves that she was not a daily wagger in the year 2012. If she was not a daily wagger in the year 2012 thus then how she abruptly entered in the seniority list dated 30.11.2016 is not clear. It simply means that her name was introduced in the seniority list that was prepared in the year 2016 for the first time in order to give her undue benefit. The petitioner has failed to explain as to why her name has been shown in the seniority list dated 30.11.2016 and why her name was not shown in the seniority list dated 31.12.2012. This list Ext.PW1/B also falsifies the case of the petitioner to the effect that she was engaged a daily waged worker in August, 2011 and she worked in the same capacity after her alleged termination.

13. On the other hand the case of the respondent has been very specific to the effect that petitioner was in fact engaged on bill basis and she was given a consolidated work on one point of time and when the work was completed, the same was assessed and thereafter the amount payable was also assessed. To prove this fact the respondent has proved on record a document prepared from the record by B.O. Chauntra to show the manner in which payments were made to the



petitioner. It is clear from this document Ext.RW1/B that for the month of August 2011, the petitioner was paid Rs.14420/-. In the month of October she was paid Rs.9960/-. In the year 2011 the daily wage fixed in the State of Himachal Pradesh was much below to Rs.14420/-. Even as on today the daily wages of a beldar are not above Rs.14000/-. The respondent has examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar and his affidavit is Ext.RW1/A. He has categorically stated about all these facts. The petitioner has examined Shri Devender Singh Dogra, Range Officer, Joginder Nagar as PW2 in the witness box and he had brought all the record requisitioned from him. He has stated that no tender was allotted to the petitioner for bill basis and no advertisement was issued by the department. Documents Ext.R1 to Ext.R23 tendered on the record by PW2 Sh. Devender Singh Dogra are carefully examined, it is clear that the petitioner has been paid after assessing her work and no payment was made on daily wage basis. It is also clear from these documents that she has either prepared the pits or filled up the pits or planted the plants in the same and she was paid as per the rates approved. The petitioner has signed every such payment and in Ext.R1 she was paid sum of Rs.14420/- which is higher to the daily wages of a workman. The petitioner has not raised an objection while receiving such payment and she can not contend that she was a daily wager and has never worked on bill basis as claimed. These documents have come from the proper custody and these documents have not been disputed by the petitioner. These documents suggests that the petitioner had used to work and thereafter her work was assessed and payment was accordingly made. These documents do not suggest that she worked on daily wage basis and was paid fixed daily at the end of the month. There is nothing in the statement of Shri Rajeev Kumar which would prove that the petitioner was a daily wager and she was working on muster roll. It is clear from his statement that the petitioner was made to work on bill basis and she was doing seasonal work rather than working on muster roll basis. The witness Shri Rajeev Kumar was questioned regarding some other workmen who have regularized but there could not be parity with the daily wage workers and the present petitioner who was working on bill voucher basis. There is no document on the record which would show that even after the year 2009 when the Government of Himachal Pradesh had issued specific notification to the effect that no workman shall be engaged on muster roll basis, the respondent still violated these instructions and engaged workmen on muster roll. The officer of the respondent department would have never violated the directions of the State Government and engaged the workman on muster roll against the orders. No evidence has been led by the petitioner that even if a particular person had engaged on daily wage by the department in violation to the directions of the State Government. The petitioner has simply relied upon the incorrectly prepared documents which could not be relied for the reasons already discussed hereinabove. The petitioner has failed to prove that she was a daily waged beldar and hat worked on muster roll basis rather it is proved that she was worked on bill basis and specific amount was paid to her on the completion of the work. The petitioner has failed to show regarding Government system in the year 2011 and there as a ban on such system. Learned Authorized Representative of the petitioner has pleaded that bill vouchers system is a device developed by the respondent in order to bypass the labour laws and there is no such reference received from the appropriate Government and therefore this court can not adjudicate something which is on behalf of scope of the reference to the effect that as to whether the bill voucher system of work was camouflage device merely to frustrate the rights of the workman under Section 25-F of the Act, the position would have been different and this court could have adjudicate such a question but when no such question has been imposed before this court, the court can not raised favour on bill voucher system developed by the State Government as there is no challenge to the same and there is no reference by the appropriate Government to adjudicate this fact. In view of the aforementioned reasons it is not proved that the petitioner was a daily wage beldar and she was given intentional breaks and her services were finally terminated in August 2015 rather the petitioner is proved to have worked on bill voucher basis with the respondent as and when seasonal work was available and she was paid after the work done by her assessed in respect of bill vouchers determination of the State Government of H.P. the petitioner has failed to proved issues no.1 and 2 and both are held answered in negative and that the petitioner

is not entitled to any relief. Issue no.3 is also held in negative, the petition is stated to be maintainable as it has been filed in support of the reference received from the appropriate Government, hence issue no.4 is answered in the favour of the petitioner.

#### RELIEF

14. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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#### IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 503/2016  
Date of Institution : 23-8-2016  
Date of Decision : 19-10-2022

Shri Mehar Chand s/o Shri Lot Ram, r/o Village Sees, P.O. Thela, District Kullu, H.P.  
..Petitioner.

#### *Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P.  
..Respondent.

#### **Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.  
For the respondent : Sh. Anand Sharma, Ld. Adv.

#### AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Mehar Chand s/o Shri Lot Ram, r/o Village Sees, P.O. Thela, District Kullu, H.P. *w.e.f.* 26.05.1999 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 14 years *vide* demand notice dated 11.03.2014, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as beldar by the respondent *w.e.f.* 26.11.1993 and his services were terminated on 26.2.2000 by oral orders on the plea that there was no work available for him. The further case of the petitioner is to the effect that in the year 2007 to 2013 the respondent has re-engaged several workmen namely S/Shri Tirath Ram, Hemraj, Anil Sharma, Hansraj, Jagdish Kumar, Bhinder Singh, Pune Ram, Gian Chand, Thape Ram, Roshan Lal, Bahadur Singh, Kishan Chand, Moti Ram, Lal Singh, Ved Ram, Shesh Ram, Nek Ram and Narayan Singh without giving the petitioner an opportunity and thus there were violation of the labour laws. The petitioner has submitted that the respondent has not only violated the provisions of Sections 25-B and 25-F but Sections 25-G and 25-H also and therefore, his services be reinstated with all consequential benefits.

3. The respondent has resisted and contested the petition and admitted the engagement of the petitioner as a beldar. The case of the respondent is to the effect that he has never completed 240 days in any of the preceding calendar years and he had himself abandoned the work and therefore, he was not entitled for any relief. It is also denied that the juniors were re-engaged at the cost of petitioner.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 01.07.2019:—

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 26.05.1999 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner has not approached the Court with clean hands and has concealed true and material facts, as alleged? . . .*OPR.*
4. Whether the petitioner has no cause of action to file the case, as alleged? . . .*OPR.*
5. Whether the claim petition is barred by limitation, as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: Yes
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.1, 2 and 5

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has alleged that he had worked for more than 240 days in the calendar year preceding his termination and there is violation of Section 25-F of the Act as no notice or compensation part has been dealt with by the respondent. On the other hand, the respondent has denied that the petitioner has completed 240 days as alleged. The petitioner has placed on record the mandays chart Ex.PW1/C. A careful perusal of this document shows the petitioner has worked in between 26 October 1992 to 25 May, 1999 with the respondent for several months. When the mandays chart is examined in the reverse order from 25 May 1999 to June, 1998 to ascertain the number of working days in preceding 12 calendar months, it becomes clear that minimum 240 days are not completed. It is clear that many months have been missed in between and thus there is time to time termination of the petitioner and due to such termination he could not complete 240 days in the preceding 12 calendar months. There is no reference to deal with time to time termination before this court. The petitioner has not raised any such grouse either by way of demand notice or in some other manner. During conciliation proceeding time to time termination was also not dealt with by the Conciliation Officer and the appropriate Government has made any such reference. Therefore, this court can not deal with time to time termination and hold that there had been unfair labour practice with the petitioner. The court has, therefore, to rely upon the mandays chart and perusal of this mandays chart show that the petitioner has not completed minimum 240 days just before his termination in preceding 12 calendar months and therefore, there is no violation of Section 25-F of the Act.

10. The petitioner has pleaded in para no.2 of the claim petition that several workmen who were terminated along with him have been re-engaged by the respondent in between 2007 to 2013. He has named several persons in para no.3 of the petition. The respondent has vaguely denied these averments. The petitioner filed the rejoinder and reaffirmed the contents of this para again. When the petitioner led his evidence in the shape of his affidavit Ext.PW1/A he named all those persons who were retrenched along with him. He has specifically stated that all these persons have been re-engaged and regularized but he was not given an opportunity to do so. This affidavit is not a simple piece of paper but it is a statement made on oath by the petitioner and it can not be taken lightly. The petitioner was subjected to cross-examination but this aspect of the matter has not specifically dealt with by way of searching cross-examination. It was the duty of the officers of the respondent to examine the records and find out whether any such persons have worked with the petitioner or not. It was the duty of the respondent to examine the records and find out whether these workmen were also disengaged along with the petitioner. Again, it was the duty of the respondent to examine the matter and find out whether these persons have been re-engaged without giving an opportunity to

the petitioner. No such exercise was undertaken by the respondent. The respondent has also led evidence and examined Shri Ayush Minhas, Senior Executive Engineer as RW1. He has filed affidavit Ext.RW1/A and in this affidavit he is absolutely silent about these workmen who have been mentioned in para no.3 of the petition and in the affidavit filed by the petitioner. He was subjected to cross-examination wherein he pleaded his ignorance to explain that these persons were juniors to the petitioners and have been regularized. He is thus not clear as to whether any such workmen existed or any such workman was ever terminated with the petitioner and re-engaged without giving an opportunity to the petitioner. When this evidence of the petitioner has not been specifically met by the respondent, the petitioner can not be made to suffer. The petitioner also can not be compelled to lead better evidence for the reason that the respondent is the custodian of all the records and is capable enough to meet the averments made in para no.2 of the petition filed by the petitioner. Since nothing has been done by the respondent to meet these averments, therefore, the statement of the petitioner made on oath can not be treated lightly and it has to be accepted as unrebutted and unchallenged evidence. After all, the petitioner is workman and he has approached the court by taking the shelter of beneficial legislation where he is not supposed to prove the facts beyond reasonable doubt. In this beneficial piece of legislation interest of the workman has to be protected and the onus rests upon the employer to prove the things in negative. Once the petitioner has made a clear cut mention of all the workers in para no.2 of the petition and has spoken about the same in his affidavit, the respondent can not take the risk to not replying these allegations specifically. Since the respondent has taken the risk of not denying or verifying the things by leading better evidence, the case of the petitioner is proved to the effect that the other workmen who were disengaged with the petitioner were re-engaged without giving him an opportunity. Thus it is clear cut violation of Section 25-G of the Act.

11. The respondent has taken up the plea of abandonment of the work by the petitioner but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called any point of time and no responsible officer made his observations on a document prepared to close the case of the petitioner to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment. Rather, the petitioner has been able to prove that his services were disengaged and thereafter violation of Section 25-G of the Act was done by the respondent by not asking him to join the duties when similar situated persons were re-engaged and later on they were regularized.

12. The reference specifically finds mentioned of the delay part. As per the language of the reference this court is suppose to adjudicate the impact of delay of fifteen years as the demand was raised for the first time in 11.3.2014. In case the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2007 is considered even then the petitioner kept mum for more than 7 years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹75,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. Issues no.1, 2 and 5 are decided accordingly.

ISSUES No. 3 and 4

13. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of

action in his favour to file the present case, hence these issues are also held in favour of the petitioner.

#### RELIEF

14. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case and the petitioner had raised demand after a gap of more than 16 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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#### IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 505/2016  
Date of Institution : 23-8-2016  
Date of Decision : 19-10-2022

Shri Salig Ram s/o Shri Man Chand, r/o Village Najan, P.O. Thela, District Kullu, H.P.

*..Petitioner .*

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P.

*..Respondent .*

#### Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Anand Sharma, Ld. Adv.

## AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Salig Ram s/o Shri Man Chand, r/o Village Najan, P.O. Thela, District Kullu, H.P. *w.e.f.* 26.3.1998 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 16 years *vide* demand notice dated 29.4.2014, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as beldar by the respondent *w.e.f.* 26.4.1994 and his services were terminated on 24.3.1998 by oral orders on the plea that there was no work available for him. The further case of the petitioner is to the effect that in the year 2007 to 2013 the respondent has re-engaged several workmen namely S/Shri Tirath Ram, Hemraj, Anil Sharma, Hansraj, Jagdish Kumar, Bhinder Singh, Pune Ram, Gian Chand, Thape Ram, Roshan Lal, Bahadur Singh, Kishan Chand, Moti Ram, Lal Singh, Ved Ram, Shesh Ram, Nek Ram and Narayan Singh without giving the petitioner an opportunity and thus there were violation of the labour laws. The petitioner has submitted that the respondent has not only violated the provisions of Sections 25-B and 25-F but Sections 25-G and 25-H also and therefore, his services be reinstated with all consequential benefits.

3. The respondent has resisted and contested the petition and admitted the engagement of the petitioner as a beldar. The case of the respondent is to the effect that he has never completed 240 days in any of the preceding calendar years and he had himself abandoned the work and therefore, he was not entitled for any relief. It is also denied that the juniors were re-engaged at the cost of petitioner.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 01.07.2019:—

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 26.03.1998 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner has not approached the Court with clean hands and has concealed true and material facts, as alleged? . . .*OPR.*
4. Whether the petitioner has no cause of action to file the case, as alleged? . . .*OPR.*
5. Whether the claim petition is barred by limitation, as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	decided accordingly
Issue No.2	:	decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	Yes
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.1, 2 and 5

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has alleged that he had worked for more than 240 days in the calendar year preceding his termination and there is violation of Section 25-F of the Act as no notice or compensation part has been dealt with by the respondent. On the other hand, the respondent has denied that the petitioner has completed 240 days as alleged. The petitioner has placed on record the mandays chart Ex.PW1/B. A careful perusal of this mandays chart Ext.PW1/B shows that the petitioner has worked for more than 240 days in between March 1998 to April 1997 (in reverse order). In such a situation it was mandatory for the respondent to have complied with the provisions contained in Section 25-F of the Act which has not been complied with in this case. The case of the respondent is to the effect that petitioner has himself abandoned the work but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called any point of time and no responsible officer made his observations on a document prepared to close the case of the petitioner to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment.

10. The petitioner has pleaded in para no.2 of the claim petition that several workmen who were terminated alongwith him have been re-engaged by the respondent in between 2007 to 2013. He has named several persons in para no.2 of the petition. The respondent has vaguely denied these averments. The petitioner filed the rejoinder and reaffirmed the contents of this para again. When the petitioner led his evidence in the shape of his affidavit Ext.PW1/A he named all those persons who were retrenched along-with him. He has specifically stated that all these persons have been re-engaged and regularized but he was not given an opportunity to do so. This affidavit is not a simple piece of paper but it is a statement made on oath by the petitioner and it can not be taken lightly. The petitioner was subjected to cross-examination but this aspect of the matter has not specifically dealt with by way searching cross-examination. It was the duty of the officers of the respondent to examine the records and find out whether any such persons have worked with the petitioner or not. It was the duty of the respondent to examine the records and find out whether these workmen were also disengaged along-with the petitioner. Again, it was the duty of the respondent to examine the matter and find out whether these persons have been re-engaged without giving an opportunity to the petitioner. No such exercise was undertaken by the respondent. The



respondent has also led evidence and examined Shri Ayush Minhas, Senior Executive Engineer as RW1. He has filed affidavit Ext.RW1/A and in this affidavit he is absolutely silent about these workmen who have been mentioned in para no.2 of the petition and in the affidavit filed by the petitioner. He was subjected to cross-examination wherein he pleaded his ignorance to explain that these persons were juniors to the petitioners and have been regularized. He is thus not clear as to whether any such workmen existed or any such workman was ever terminated with the petitioner and re-engaged without giving an opportunity to the petitioner. When this evidence of the petitioner has not been specifically met by the respondent, the petitioner can not be made to suffer. The petitioner also can not be compelled to lead better evidence for the reason that the respondent is the custodian of all the records and is capable enough to meet the averments made in para no.2 of the petition filed by the petitioner. Since nothing has been done by the respondent to meet these averments, therefore, the statement of the petitioner made on oath can not be treated lightly and it has to be accepted as unrebutted and unchallenged evidence. After all, the petitioner is workman and he has approached the court by taking the shelter of beneficial legislation where is not supposed to prove the facts beyond reasonable doubt. In this beneficial piece of legislation interest of the workman has to be protected and the onus rests upon the employer to prove the things in negative. Once the petitioner has made a clear cut mention of all the workers in para no.2 of the petition and has spoken about the same in his affidavit, the respondent can not take the risk to not replying these allegations specifically. Since the respondent has taken the risk of not denying or verifying the things by leading better evidence, the case of the petitioner is proved to the effect that the other workmen who were disengaged with the petitioner were re-engaged without giving him an opportunity. Thus it is clear cut violation of Section 25-G of the Act. Rather, the petitioner has been able to prove that his services were disengaged and thereafter violation of Section 25-G of the Act was done by the respondent by not asking him to join the duties when similar situated persons were re-engaged and later on they were regularized.

11. The reference specifically finds mentioned of the delay part. As per the language of the reference this court is suppose to adjudicate the impact of delay of fifteen years as the demand was raised for the first time in 11.3.2014. In case the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2007 is considered even then the petitioner kept mum for more than 7 years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹75,000/- is awarded as lump-sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. Issues no.1, 2 and 5 are decided accordingly.

#### ISSUES No.3 and 4

12. There is nothing on the record to prove that the the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action in his favour to file the present case, hence these issues are also held in favour of the petitioner.

#### RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case and the petitioner had raised demand after a gap of

more than 16 years and his claim for reinstatement has thus been vitiated by delay and latches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 506/2016  
Date of Institution : 23-8-2016  
Date of Decision : 19-10-2022

Shri Chaman Lal s/o Shri Septi Ram, r/o Village Aaisha, P.O. Thela, District Kullu, H.P.  
..Petitioner.

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P.  
..Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.  
For the respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Chaman Lal s/o Shri Septi Ram, r/o Village Aaisha, P.O. Thela, District Kullu, H.P. w.e.f. 26.10.1995 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P., who had worked as

beldar on daily wages and has raised his industrial dispute after more than 18 years *vide* demand notice dated 11.03.2014, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, in brief, is to the effect that he was engaged as beldar by the respondent *w.e.f.* 01.5.1986 and his services were terminated on 01.4.2000 by oral orders on the plea that there was no work available for him. The further case of the petitioner is to the effect that in the year 2007 to 2013 the respondent has re-engaged several workmen namely S/Shri Tirath Ram, Hemraj, Anil Sharma, Hansraj, Jagdish Kumar, Bhinder Singh, Pune Ram, Gian Chand, Thape Ram, Roshan Lal, Bahadur Singh, Kishan Chand, Moti Ram, Lal Singh, Ved Ram, Shesh Ram, Nek Ram and Narayan Singh without giving the petitioner an opportunity and thus there were violation of the labour laws. The petitioner has submitted that the respondent has not only violated the provisions of Sections 25-B and 25-F but Sections 25-G and 25-H also and therefore, his services be reinstated with all consequential benefits.

3. The respondent has resisted and contested the petition and admitted the engagement of the petitioner as a beldar. The case of the respondent is to the effect that he has never completed 240 days in any of the preceding calendar years and he had himself abandoned the work and therefore, he was not entitled for any relief. It is also denied that the juniors were re-engaged at the cost of petitioner.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 01.07.2019:-

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 26.10.1995 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner has not approached the Court with clean hands and has concealed true and material facts, as alleged? . . .*OPR.*
4. Whether the petitioner has no cause of action to file the case, as alleged? . . .*OPR.*
5. Whether the claim petition is barred by limitation, as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : decided accordingly

Issue No.2 : decided accordingly

Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	Yes
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No. 1, 2 and 5

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has alleged that he had worked for more than 240 days in the calendar year preceding his termination and there is violation of Section 25-F of the Act as no notice or compensation part has been dealt with by the respondent. On the other hand, the respondent has denied that the petitioner has completed 240 days as alleged. The petitioner has placed on record the mandays chart Ex.PW1/C. A careful perusal of this mandays chart Ext.PW1/C shows that the petitioner has worked for more than 240 days in between 25 October 1995 to November, 1994 (in reverse order). In such a situation it was mandatory for the respondent to have complied with the provisions contained in Section 25-F of the Act which has not been complied with in this case. The case of the respondent is to the effect that the petitioner has abandoned the work but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called any point of time and no responsible officer made his observations on a document prepared to close the case of the petitioner to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment.

10. The petitioner has pleaded in para no.2 of the claim petition that several workmen who were terminated along with him have been re-engaged by the respondent in between 2007 to 2013. He has named several persons in para no.2 of the petition. The respondent has vaguely denied these averments. The petitioner filed the rejoinder and reaffirmed the contents of this para again. When the petitioner led his evidence in the shape of his affidavit Ext.PW1/A he named all those persons who were retrenched along with him. He has specifically stated that all these persons have been re-engaged and regularized but he was not given an opportunity to do so. This affidavit is not a simple piece of paper but it is a statement made on oath by the petitioner and it can not be taken lightly. The petitioner was subjected to cross-examination but this aspect of the matter has not specifically dealt with by way searching cross-examination. It was the duty of the officers of the respondent to examine the records and find out whether any such persons have worked with the petitioner or not. It was the duty of the respondent to examine the records and find out whether these workmen were also disengaged along with the petitioner. Again, it was the duty of the respondent to examine the matter and find out whether these persons have been re-engaged without giving an opportunity to the petitioner. No such exercise was undertaken by the respondent. The respondent has also led evidence and examined Shri Ayush Minhas, Senior Executive Engineer as RW1. He has filed affidavit Ext.RW1/A and in this affidavit he is absolutely silent about these workmen who have been mentioned in para no.2 of the petition and in the affidavit filed by the petitioner. He was subjected to cross-examination wherein he pleaded his ignorance to explain that these persons were juniors to the petitioners and have been regularized. He is thus not clear as to whether any such workmen existed or any such workman was ever terminated with the petitioner and re-engaged without giving an opportunity to the petitioner. When this evidence of the petitioner

has not been specifically met by the respondent, the petitioner can not be made to suffer. The petitioner also can not be compelled to lead better evidence for the reason that the respondent is the custodian of all the records and is capable enough to meet the averments made in para no.3 of the petition filed by the petitioner. Since nothing has been done by the respondent to meet these averments, therefore, the statement of the petitioner made on oath can not be treated lightly and it has to be accepted as unrebutted and unchallenged evidence. After all, the petitioner is workman and he has approached the court by taking the shelter of beneficial legislation where is not supposed to prove the facts beyond reasonable doubt. In this beneficial piece of legislation interest of the workman has to be protected and the onus rests upon the employer to prove the things in negative. Once the petitioner has made a clear cut mention of all the workers in para no.2 of the petition and has spoken about the same in his affidavit, the respondent can not take the risk to not replying these allegations specifically. Since the respondent has taken the risk of not denying or verifying the things by leading better evidence, the case of the petitioner is proved to the effect that the other workmen who were disengaged with the petitioner were re-engaged without giving him an opportunity. Thus it is clear cut violation of Section 25-G of the Act. Rather, the petitioner has been able to prove that his services were disengaged and thereafter violation of Section 25-G of the Act was done by the respondent by not asking him to join the duties when similar situated persons were re-engaged and later on they were regularized.

11. The reference specifically finds mentioned of the delay part. As per the language of the reference this court is suppose to adjudicate the impact of delay of fifteen years as the demand was raised for the first time in 11.3.2014. In case the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2007 is considered even then the petitioner kept mum for more than 7 years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹75,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. Issues no.1, 2 and 5 are decided accordingly.

ISSUES No. 3 and 4

12. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action in his favour to file the present case, hence these issues are also held in favour of the petitioner.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case and the petitioner had raised demand after a gap of more than 18 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 504/2016

Date of Institution : 23-8-2016

Date of Decision : 19-10-2022

Shri Ram Singh s/o Shri Septi Ram, r/o Village Najan, P.O. Thela, District Kullu, H.P.

. .Petitioner .

*Versus*

H.P. The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P. . .Respondent .

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Ram Singh s/o Shri Septi Ram, r/o Village Najan, P.O. Thela, District Kullu, H.P. *w.e.f.* 26.5.1998 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 15 years *vide* demand notice dated 11.3.2014, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as beldar by the respondent *w.e.f* 29.4.1994 and his services were terminated on 26.4.1998 by oral orders on the plea that there was no work available for him. The further case of the petitioner is to the effect that in the year 2007 to 2013 the respondent has re-engaged several workmen namely S/Shri Tirath Ram, Hemraj, Anil Sharma, Hansraj, Jagdish Kumar, Bhinder Singh, Pune Ram, Gian Chand, Thape Ram, Roshan Lal, Bahadur Singh, Kishan Chand, Moti Ram, Lal Singh, Ved Ram, Shesh Ram, Nek Ram and Narayan Singh without giving the petitioner an opportunity and thus there were violation of the labour laws. The petitioner has submitted that the respondent has not only violated the provisions of Sections 25-B and 25-F but Sections 25-G and 25-H also and therefore, his services be reinstated with all consequential benefits.

3. The respondent has resisted and contested the petition and admitted the engagement of the petitioner as a beldar. The case of the respondent is to the effect that he has never completed 240 days in any of the preceding calendar years and he had himself abandoned the work and therefore, he was not entitled for any relief. It is also denied that the juniors were re-engaged at the cost of petitioner.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 01.07.2019:—

1. Whether the termination of services of the petitioner by the respondent *w.e.f* 26.05.1998 is/was illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the petitioner has not approached the Court with clean hands and has concealed true and material facts, as alleged? . . .*OPR*.
4. Whether the petitioner has no cause of action to file the case, as alleged? . . .*OPR*.
5. Whether the claim petition is barred by limitation, as alleged? . . .*OPR*.

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

- |             |   |                     |
|-------------|---|---------------------|
| Issue No.1  | : | decided accordingly |
| Issue No.2  | : | decided accordingly |
| Issue No.3  | : | No                  |
| Issue No.4  | : | No                  |
| Issue No. 5 | : | Yes                 |

Relief. : Petition is partly allowed awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No. 1, 2 and 5

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has alleged that he had worked for more than 240 days in the calendar year preceding his termination and there is violation of Section 25-F of the Act as no notice or compensation part has been dealt with by the respondent. On the other hand, the respondent has denied that the petitioner has completed 240 days as alleged. The petitioner has placed on record the mandays chart Ex.PW1/B. A careful perusal of this document shows the petitioner has worked in between 26 February 1994 to 25 May, 1998 with the respondent for several months. When the mandays chart is examined in the reverse order from 25 May 1998 to June, 1997 to ascertain the number of working days in preceding 12 calendar months, it becomes clear that minimum 240 days are not completed. It is clear that many months have been missed in between and thus there is time to time termination of the petitioner and due to such termination he could not complete 240 days in the preceding 12 calendar months. There is no reference to deal with time to time termination before this court. The petitioner has not raised any such grouse either by way of demand notice or in some other manner. During conciliation proceeding time to time termination was also not dealt with by the Conciliation Officer and the appropriate Government has made any such reference. Therefore, this court can not deal with time to time termination and hold that there had been unfairlabour practice with the petitioner. The court has, therefore, to rely upon the mandays chart and perusal of this mandays chart show that the petitioner has not completed minimum 240 days just before his termination in preceding 12 calendar months and therefore, there is no violation of Section 25-F of the Act.

10. The petitioner has pleaded in para no.3 of the claim petition that several workmen who were terminated alongwith him have been re-engaged by the respondent in between 2007 to 2013. He has named several persons in para no.3 of the petition. The respondent has vaguely denied these averments. The petitioner filed the rejoinder and reaffirmed the contents of this para again. When the petitioner led his evidence in the shape of his affidavit Ext.PW1/A he named all those persons who were retrenched along-with him. He has specifically stated that all these persons have been re-engaged and regularized but he was not given an opportunity to do so. This affidavit is not a simple piece of paper but it is a statement made on oath by the petitioner and it can not be taken lightly. The petitioner was subjected to cross-examination but this aspect of the matter has not specifically dealt with by way searching cross-examination. It was the duty of the officers of the respondent to examine the records and find out whether any such persons have worked with the petitioner or not. It was the duty of the respondent to examine the records and find out whether these workmen were also disengaged along-with the petitioner. Again, it was the duty of the respondent to examine the matter and find out whether these persons have been re-engaged without giving an opportunity to the petitioner. No such exercise was undertaken by the respondent. The respondent has also led evidence and examined Shri Ayush Minhas, Senior Executive Engineer as RW1. He has filed affidavit Ext.RW1/A and in this affidavit he is absolutely silent about these workmen who have been mentioned in para no.3 of the petition and in the affidavit filed by the petitioner. He was subjected to cross-examination wherein he pleaded his ignorance to explain that these persons were juniors to the petitioners and have been regularized. He is thus not clear as to whether any such workmen existed or any such workman was ever terminated with the petitioner and re-engaged



without giving an opportunity to the petitioner. When this evidence of the petitioner has not been specifically met by the respondent, the petitioner can not be made to suffer. The petitioner also can not be compelled to lead better evidence for the reason that the respondent is the custodian of all the records and is capable enough to meet the averments made in para no.3 of the petition filed by the petitioner. Since nothing has been done by the respondent to meet these averments, therefore, the statement of the petitioner made on oath can not be treated lightly and it has to be accepted as unrebutted and unchallenged evidence. After all, the petitioner is workman and he has approached the court by taking the shelter of beneficial legislation where is not supposed to prove the facts beyond reasonable doubt. In this beneficial piece of legislation interest of the workman has to be protected and the onus rests upon the employer to prove the things in negative. Once the petitioner has made a clear cut mention of all the workers in para no.3 of the petition and has spoken about the same in his affidavit, the respondent can not take the risk to not replying these allegations specifically. Since the respondent has taken the risk of not denying or verifying the things by leading better evidence, the case of the petitioner is proved to the effect that the other workmen who were disengaged with the petitioner were re-engaged without giving him an opportunity. Thus it is clear cut violation of Section 25-G of the Act.

11. The respondent has taken up the plea of abandonment of the work by the petitioner but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called any point of time and no responsible officer made his observations on a document prepared to close the case of the petitioner to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment. Rather, the petitioner has been able to prove that his services were disengaged and thereafter violation of Section 25-G of the Act was done by the respondent by not asking him to join the duties when similar situated persons were re-engaged and later on they were regularized.

12. The reference specifically finds mentioned of the delay part. As per the language of the reference this court is suppose to adjudicate the impact of delay of fifteen years as the demand was raised for the first time in 11.3.2014. In case the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2007 is considered even then the petitioner kept mum for more than 7 years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹75,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. Issues no.1, 2 and 5 are decided accordingly.

#### ISSUES No. 3 and 4

13. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action in his favour to file the present case, hence these issues are also held in favour of the petitioner.

14. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case and the petitioner had raised demand after a gap of more than 15 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2022.

Sd/-

(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

### कार्मिक विभाग

#### अधिसूचना

शिमला-171 002, 31 दिसम्बर, 2022

**संख्या: पर (एपी-बी)बी (2)-2/2011.**—हिमाचल प्रदेश सरकार ने निम्नलिखित पद के प्रवर्ग के सम्बन्ध में नीचे दर्शाई गई अधिसूचना संख्या और तारीख द्वारा सामान्य संशोधित भर्ती और प्रोन्नति नियम संशोधित किए हैं:—

क्रम संख्या	नियम का नाम	अधिसूचना संख्या और तारीख
1.	हिमाचल प्रदेश कार्मिक विभाग, वरिष्ठ सहायक, वर्ग-III (अराजपत्रित, लिपिक वर्गीय सेवाएं) सामान्य भर्ती और प्रोन्नति (छठा संशोधन) नियम, 2021 <sup>ए</sup>	संख्या: पी0ई0आर0-(ए0पी0)-सी-ए(3)-3 / 2007-I तारीख 11 नवम्बर, 2021.

उपर्युक्त भर्ती और प्रोन्नति नियम भारत के संविधान के अनुच्छेद 309 के अधीन बनाए गए हैं और इस प्रकार हिमाचल प्रदेश लोक सेवा आयोग में उक्त पद के प्रवर्ग के लिए लागू नहीं होते हैं क्योंकि हिमाचल

प्रदेश लोक सेवा आयोग एक संवैधानिक निकाय है और आयोग के कर्मचारियों की सेवा शर्तें भारत के संविधान के अनुच्छेद 318(बी) के उपबन्धों के अधीन विनियमित होती हैं।

अतः हिमाचल प्रदेश सरकार के अधीन पदों के विभिन्न प्रवर्गों की बाबत भर्ती और प्रोन्नति नियमों में एकरूपता लाए जाने के दृष्टिगत, हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 318 के साथ पठित अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आदेश देते हैं कि उपर्युक्त वर्णित भर्ती और प्रोन्नति नियम, हिमाचल प्रदेश लोक सेवा आयोग के पदों के उपर्युक्त निर्दिष्ट प्रवर्ग के लिए इस अधिसूचना के राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से लागू होंगे।

आदेश द्वारा,

प्रबोध सक्सेना,  
अतिरिक्त मुख्य सचिव (कार्मिक)।

*[Authoritative English text of this Department Notification No. Per (AP-B)B(2)-2/2011 dated 31-12-2022 as required under Clause (3) of Article 348 of the Constitution of India].*

## PERSONNEL DEPARTMENT

### NOTIFICATION

*Shimla-171 002, the 31st December, 2022*

**No. Per (AP-B) B(2)-2/2011.**—The Government of Himachal Pradesh has amended the Common Recruitment and Promotion Rules in respect of the following category of post *vide* Notification number and date shown as under:—

Sl. No.	Title of the Rules	Notification No. & Date
1.	The Himachal Pradesh, Department of Personnel, Senior Assistant, Class-III (Non-Gazetted, Ministerial Services) Common Recruitment & Promotion (Sixth amendment) Rules, 2021.	No. Per (AP)-C-A(3)-3/2007-I dated 11th November, 2021.

The above Recruitment and Promotion Rules have been framed under Article 309 of the Constitution of India and as such are not applicable to the category of post in the Himachal Pradesh Public Service Commission as the H.P. Public Service Commission is a Constitutional body and the service conditions of the employees of the Commission are regulated under the provisions of Article 318(b) of the Constitution of India.

Therefore, with a view to bring uniformity in the Recruitment and Promotion Rules in respect of various categories of posts under the Government of Himachal Pradesh, the Governor, Himachal Pradesh, in exercise of the powers conferred by proviso to Article 309 read with Article 318 of the Constitution of India, is pleased to order that the above mentioned Recruitment and Promotion Rules shall be applicable to the above referred category of post of the Himachal Pradesh

Public Service Commission from the date of publication of this Notification in the Rajpatra (e-Gazette), Himachal Pradesh.

By order,

PRABODH SAXENA,  
Additional Chief Secretary (Personnel).

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, शाहपुर, जिला कांगड़ा (हि0 प्र0)**

मुकद्दमा : इन्द्राज सेहत नाम।

पेशी : 03-01-2023

दिनेश कुमार पुत्र चमेल सिंह, निवासी भटेछ, तहसील शाहपुर, जिला कांगड़ा, हि0प्र0।

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37(2) के तहत महाल भटेछ में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम दिनेश कुमार पुत्र चमेल सिंह है जबकि महाल भटेछ के राजस्व अभिलेख में उक्त नाम गंगू पुत्र चमेल पुत्र पंजाब सिंह दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त महाल में उक्त नाम को गंगू उपनाम दिनेश कुमार पुत्र चमेल पुत्र पंजाब सिंह से दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे यदि किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 03-01-2023 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 07-10-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता प्रथम श्रेणी,  
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

**ब अदालत कार्यकारी दण्डाधिकारी शाहपुर, जिला कांगड़ा (हि0 प्र0)**

मुकद्दमा : विवाह पंजीकरण

तारीख पेशी : 03-01-2023

1. श्री मनोज कुमार पुत्र प्रभात सिंह, निवासी डुढ़म्ब, तहसील शाहपुर, जिला कांगड़ा (हि0 प्र0)

2. श्रीमती राजविन्दर कौर पुत्री गुरमुख सिंह, निवासी गंगरोला, तहसील व जिला पटियाला, पंजाब  
वादीगण।

बनाम

आम जनता

विषय.—इश्तहार राजपत्र/मुशत्री मुनादी बाबत प्रार्थना-पत्र हि0प्र0 विवाह पंजीकरण अधिनियम 1994/2004 जेर धारा 8(4) के अन्तर्गत विवाह पंजीकरण बारे।

प्रार्थीगण श्री मनोज कुमार पुत्र प्रभात सिंह, निवासी डुढम्ब, तहसील शाहपुर, जिला कांगड़ा (हि0 प्र0) व श्रीमती राजविन्दर कौर पुत्री गुरमुख सिंह, निवासी गंगरोला, तहसील व जिला पटियाला, पंजाब ने प्रार्थना-पत्र मय हल्फिया ब्यान इस आशय से गुजारा है कि उनकी शादी दिनांक 18-03-2018 को हिन्दू रीति-रिवाज के अनुसार हो चुकी है परन्तु इसका पंजीकरण ग्राम पंचायत रकड़ का बाग, विकास खण्ड रैत, जिला कांगड़ा (हि0प्र0) के रिकार्ड में दर्ज नहीं हुआ है। जिसे प्रार्थीगण अब दर्ज करवाना चाहते हैं।

अतः इस सम्बन्ध में सर्वसाधारण को व श्रीमती राजविन्दर कौर के माइका पक्ष को इस इश्तहार के द्वारा सूचित किया जाता है कि प्रार्थीगण की इस शादी के पंजीकरण बारे यदि उन्हें कोई उजर/एतराज हो तो वह दिनांक 03-01-2023 को या इससे पूर्व असालतन व वकालतन इस अदालत में हाजिर आकर अपने उजर/एतराज पेश कर सकता/सकती है। हाजिर न आने की सूरत में नियमानुसार शादी पंजीकरण के आदेश पारित कर दिये जायेंगे।

आज दिनांक 06-12-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—  
कार्यकारी दण्डाधिकारी,  
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा : इन्द्राज मृत्यु तिथि

पेशी : 03-01-2023

ओम प्रकाश पुत्र स्वारू राम, निवासी नेरटी, तहसील शाहपुर, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

विषय.—जन्म एवं मृत्यु पंजीकरण अधिनियम की जेर धारा 13(3) पुनरावलोकित 1969 के तहत मृत्यु प्रमाण-पत्र लेने बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र मय ब्यान हल्फिया गुजारा है जिसमें लिखा है कि उसके पुत्र हरनाम सिंह पुत्र ओम प्रकाश, निवासी नेरटी का देहांत दिनांक 21-05-2002 को हुआ था परन्तु अज्ञानतावश इसका इन्द्राज ग्राम पंचायत नेरटी के रिकार्ड में दर्ज नहीं हुआ है। प्रार्थी उक्त मृत्यु तिथि को दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में यदि आम जनता या अन्य किसी को उक्त मृत्यु तिथि को ग्राम पंचायत नेरटी के रिकार्ड के मृत्यु रजिस्टर में दर्ज करवाने बारे कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 03-01-2023 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 12-10-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—  
कार्यकारी दण्डाधिकारी,  
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।